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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**FAO No.1167 of 1999
Date of Decision : 22.01.2019**

RAM AVTAR

....APPELLANT

VERSUS

STATE OF HARYANA AND ANOTHER

....RESPONDENTS

CORAM : HON'BLE MR. JUSTICE B.S. WALIA

Present: Mr. Vinod K. Kanwal, Advocate for
Mr. Ashit Malik, Advocate
for the appellant.

Mr. R.K. Singla, AAG, Haryana.

B.S. WALIA, J. (ORAL)

[1] Appeal has been filed for setting aside award dated 04.12.1998, passed by the learned Motor Accidents Claims Tribunal, Kurukshetra (hereinafter referred to as 'the Tribunal'), dismissing the claim petition on account of non impleadment of the driver-owner and Insurance Company of the truck, involved in the accident with the Haryana Roadways Bus, in which the appellant was riding as Conductor as also in view of the stand of Harvinder Singh, Driver of the Haryana Roadways bus, in which the appellant was riding as Conductor that the accident had taken place on account of driver of truck bearing registration No.HRU-1394 coming at a rash and negligent speed from the wrong side and hitting the bus besides the appellant being unable to prove

that the accident took place due to the negligence on the part of the driver of the truck.

[2] Learned counsel contends that since the claim petition was under Section 163(A) of the Motor Vehicles Act, 1988, no negligence was required to be proved and since two vehicles were involved i.e. the bus in which the appellant was riding and the truck which came from the opposite side, the appellant was a third party as far as the two vehicles were concerned.

[3] Learned counsel contends that in a case of composite negligence of two vehicles, the owners and insurers of both the vehicles are liable to pay the compensation and it was open to the appellant to recover the compensation from either one of the joint tortfeasors.

[4] Learned counsel further contends that in the circumstances, compensation of Rs.81,500/- assessed by the learned Tribunal though not paid on account of dismissal of the claim petition is liable to be awarded to the appellant by setting aside the dismissal of the claim petition.

[5] *Per contra*, learned counsel for the respondent contended that the truck which collided with the bus on which the appellant was travelling as a Conductor not having been impleaded as a party, the claim petition was rightly dismissed.

[6] I have considered the submissions of learned counsel for the parties.

[7] In 'Rakesh Kumar versus Rajesh @ Raja and another', 2018(3) PLR 32, a Co-ordinate Bench of this Court was pleased to hold that in a claim petition under Section 163 (A) of the Motor Vehicles Act, the driver was not required to be impleaded as a party nor can be held liable to pay any

who is liable to pay compensation in the case of permanent disablement due to accident, arising out of the use of motor vehicle since in the case of application under Section 163(A), claimant is not required to prove the factum of rash or negligent driving on the part of the driver of the vehicle involved in the occurrence. Accordingly, driver of the vehicle is neither required to be impleaded as a party nor can be fastened with liability to pay compensation. Further as per the decision of Hon'ble the Karnataka High Court in '**Bajaj Allianz General Insurance Company Limited** versus **Shivaji Dattu Nikam and others**', 2016(4) Civil LJ 873, no negligence is required to be proved in a claim petition under Section 163 (A) of the Motor Vehicles Act and the victim of a road traffic accident is entitled to compensation on account of use of the vehicle involved in the accident. Since the accident in question took place due to collision of the bus on which the appellant was travelling with a truck coming from the opposite side, the appellant is a third party as far as the two vehicles involved in the accident are concerned and in case of composite negligence of two vehicles, the owners and insurers of both the vehicles are liable to pay compensation. In view of decision of Hon'ble the Supreme Court in '**Khenyei** versus **New India Assurance Co. Ltd. and others**', 2015(9) SCC 273, it was open to the appellant to recover the entire compensation from either of the joint tort feasons. In the instant case, since the owner/insurer of the offending truck which collided with the bus has not been arrayed as a respondent, the appellant-claimant is entitled to recover the entire compensation from the respondent-Haryana Roadways . Relevant extract of the decision of Hon'ble the Supreme Court in the case of '**Khenyei's** case (supra) is reproduced as under:-

“(i) In the case of composite negligence, plaintiff/claimant is entitled to sue both or any one of the joint tort feasons and to

recover the entire compensation as liability of joint tortfeasors is joint and several.

(ii) In the case of composite negligence, apportionment of compensation between two tortfeasors vis a vis the plaintiff/claimant is not permissible. He can recover at his option whole damages from any of them.

(iii) In case all the joint tortfeasors have been impleaded and evidence is sufficient, it is open to the court/tribunal to determine inter se extent of composite negligence of the drivers. However, determination of the extent of negligence between the joint tortfeasors is only for the purpose of their inter se liability so that one may recover the sum from the other after making whole of payment to the plaintiff/claimant to the extent it has satisfied the liability of the other. In case both of them have been impleaded and the apportionment/extent of their negligence has been determined by the court/tribunal, in main case one joint tortfeasor can recover the amount from the other in the execution proceedings.

(iv) It would not be appropriate for the court/tribunal to determine the extent of composite negligence of the drivers of two vehicles in the absence of impleadment of other joint tortfeasors. In such a case, impleaded joint tortfeasor should be left, in case he so desires, to sue the other joint tortfeasor in independent proceedings after passing of the decree or award.”

[8] Accordingly, the appeal is **allowed**, dismissal of the claim petition is **set aside** and the appellant held entitled to award of compensation of Rs.81,500/- as assessed by the Tribunal alongwith interest @ 12% per annum with effect from date of claim petition, till date of payment, leaving it open to the Haryana Roadways to institute independent proceedings against the

owner/driver of truck No.HRU-1394 for recovery after establishing entitlement of apportionment of liability in accordance with law.

(B.S. WALIA)
JUDGE

January 22, 2019
rajneesh

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No