

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

1. FAO No.1929 of 2014
Date of Decision: 28.02.2019

Appellant

Gordhan Nath and others

Respondents

2. FAO No.1930 of 2014

Kuldeep and another

Appellants

Versus

Gordhan Nath and others

Respondents

3. FAO No.2030 of 2014

Sushila and others

Appellant

Versus

Gordhan Nath and others

Respondents

4. FAO No.2031 of 2014

Priyanka

Appellant

Versus

Gordhan Nath and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Vivek Khatri, Advocate
for the appellants.

Mr. Paul S. Saini, Advocate
for the Insurance Company.

* * *

AVNEESH JHINGAN, J (Oral):

The award dated 21.01.2014 passed by the Motor Accident Claims Tribunal, Jhajjar [for brevity 'the Tribunal'] in Claim Petitions No. 103/2011, 105/2011, 106/2011 and 107/2011 has been assailed in four appeals by the claimants being aggrieved of the deduction made by the Tribunal on account of contributory negligence of the vehicle in which the deceased/injured were travelling.

Brief facts of the case are that on 07.12.2010, Naveen, Anuj, Priyanka, Babita and Puja were travelling in an Indica Car bearing registration No. CG-04HB-9284 [hereinafter referred to as 'car']. The car was being driven by Kuldeep Singh. On their way, the car met with an accident with a tanker bearing registration No. GJ-12Z-3413 [hereinafter referred to as 'tanker']. As a result of the impact, Naveen and Anuj died at the spot and rest of the occupants sustained injuries. FIR No. 579, dated 08.12.2010 was registered at Police Station Morena.

Separate claim petitions were filed under Section 166 of the Motor Vehicles Act, 1988 [for brevity 'the Act']. The Tribunal after considering the facts and evidence adduced held that there was head-on collision and the accident was caused due to contributory negligence of the driver of the car and tanker. The negligence was attributed to both the drivers in the ratio of 50:50.

The Tribunal while awarding compensation to the injured and legal heirs of the deceased deducted 50% of the amount

awarded on the ground that there was 50% contributory negligence of the driver of the car. Being aggrieved of the deduction, the present appeals have been filed.

Learned counsel for the appellants contends that the Tribunal erred in making deduction from the compensation awarded for the injured occupants and legal heirs of deceased occupants of the car as they were the passengers in the car and not the driver.

Learned counsel for the insurer argues that the accident was caused due to rash and negligent driving of the car, hence 50% deduction has rightly been made. He further contends that the claimants can claim 50% amount from owner-driver of the car as there was contributory negligence.

The contention raised by learned counsel for the appellants deserve acceptance. The compensation awarded to the injured and legal heirs of deceased occupants of the car cannot be deducted on account of negligence of driver of the car, as no negligence can be attributed to the occupants.

The claimants are entitled to claim compensation from both or any one of the joint tort-feasor.

The Supreme Court in **Khenyei v. New India Assurance Co. Ltd. and others, 2015(9) SCC 273** held as under:-

18. This Court in Challa Bharathamma & Nanjappan (supra) has dealt with the breach of policy conditions by the owner when the insurer was asked to pay the compensation fixed by the tribunal and the right to recover the same was given to the insurer in the executing court concerned

if the dispute between the insurer and the owner was the subject-matter of determination for the tribunal and the issue has been decided in favour of the insured. The same analogy can be applied to the instant cases as the liability of the joint tortfeasor is joint and several. In the instant case, there is determination of inter se liability of composite negligence to the extent of negligence of 2/3rd and 1/3rd of respective drivers. Thus, the vehicle - trailer-truck which was not insured with the insurer, was negligent to the extent of 2/3rd. It would be open to the insurer being insurer of the bus after making payment to claimant to recover from the owner of the trailer-truck the amount to the aforesaid extent in the execution proceedings. Had there been no determination of the inter se liability for want of evidence or other joint tortfeasor had not been impleaded, it was not open to settle such a dispute and to recover the amount in execution proceedings but the remedy would be to file another suit or appropriate proceedings in accordance with law. What emerges from the aforesaid discussion is as follows:

(i) In the case of composite negligence plaintiff/claimant is entitled to sue both or any one of the joint tortfeasors 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 tort feasor 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 tort feasons. In such a case, impleaded joint tort feason should be left, in case he so desires, to sue the other joint tort feason in independent proceedings after passing of the decree or award.

The award passed in the above mentioned claim petitions is modified to the extent that there would be no deduction of 50% from the amount of compensation calculated by the Tribunal and the claimants shall be entitled to whole amount calculated by the Tribunal alongwith interest as awarded by the Tribunal.

The appeals are allowed.

[AVNEESH JHINGAN]
JUDGE

February 28, 2019
pankaj baweja

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| 1. Whether speaking/ reasoned | : | Yes |
| 2. Whether reportable | : | Yes |