

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(i) CR-8817-2015 (O&M)

Karamjit Singh
...Petitioner

VERSUS

Rajiv Grover and others
...Respondents

(ii) CR-5055-2022 (O&M)

Karamjit Singh
...Petitioner

VERSUS

Rajiv Grover and others
...Respondents

Date of Decision: September 25, 2023

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Ms.Ekta Thakur, Advocate
for the petitioner.

Mr.Rajiv Jain and Mr.Kanish Jindal, Advocates
for respondent No.1

Mr.Rajiv Joshi, Advocate
for respondent No.2.

Mrs.Swatantar Kapoor, Advocate
for respondent No.4.

ARCHANA PURI, J.

These are two revision petitions filed by the petitioner-
Karamjit Singh to assail the orders dated 31.10.2015 and 17.01.2018 passed

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by learned Executing Court.

The essential facts, as noticed from the paperbook are that, initially, petitioner Karamjit Singh had filed claim petition against Rajiv Grover, in the capacity of being driver-cum-owner of Innova Car bearing registration No.PB-65E-0377 and Harwinder Singh, in the capacity of being driver of bus bearing registration No.PB-08BF-6351. Besides the same, M/s Onkar Bus Service Limited, who was owner of the aforesaid offending bus was also impleaded as respondent No.3 and insurer of the offending bus i.e. National Insurance Company Limited was impleaded as respondent No.4.

After adducing of the evidence, the claim petition, as such, was allowed and compensation was granted to the present petitioner (who was claimant before learned Tribunal). The relief clause of the Award dated 11.08.2014 reads as herein given:-

“In view of my above discussion, the petition is allowed with costs for grant of compensation to the tune of Rs.3,13,804/- along with interest at the rate of 6% P.A from the date of filing the petition till realization of the compensation amount. All the respondents are held liable to pay compensation jointly as well as severally. Counsel's fee is assessed to be Rs.1000/-. Memo of costs be prepared and file be consigned to the record room.”

Also, it should be noticed that qua issue of accident having taken place due to rash and negligent driving of the Innova car, driven by respondent No.1-Rajiv Grover and that of bus, driven by respondent No.2-Harwinder Singh, learned Tribunal had reached the conclusion that the injuries were sustained, due to contributory negligence of respondent No.1 and 2, as both of them, had been driving their afore-mentioned vehicles, rashly and negligently.

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In pursuance of the Award, so passed by learned Tribunal, the petitioner had filed the execution petition and during the pendency of the execution, in pursuance of 50% of the awarded amount having deposited by the insurance company vide cheque No.076508 dated 02.12.2014, an objection application was filed by the insurance company, thereby, taking plea that it was liable to only 50% of the awarded amount, whereas, residue 50% was to be paid by Rajiv Grover, driver of the Innova car bearing No.PB-65E-0377, as it was held to be a case of contributory negligence.

Undisputedly, in the Award, even though, issue No.1 has been decided, thereby, taking it to be a case of contributory negligence, but however, the extent of contributory negligence, between the tortfeasors has not been worked upon.

In the case of contributory negligence, a person, who has himself contributed to the accident, cannot claim the compensation for the injuries sustained by him, in the accident, to the extent of his own negligence. The extent of his negligence is required to be determined, as damages recoverable by him, in respect of the injuries have to be reduced in proportion to his contributory negligence. However, in the case of composite negligence, a person, who has suffered, had not contributed to the accident, but due to the outcome of combination of negligence of two or more other persons, in such case, the 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.

Perusal of the Award dated 11.08.2014, which is under execution, reveals about Innova car in question, driven by Rajiv Grover, to

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be coming on wrong side of the road and having struck the motorcycle of Karamjit Singh, as a result whereof, besides Karamjit Singh, his wife Neeta @ Geeta Rani, who was also occupant of the motorcycle had fallen from the motorcycle and soon after the striking of the same, the offending bus had come, which was also driven in rash and negligent manner by Harwinder Singh and it ran over the head of wife of the petitioner, while she was lying on the road, as a result whereof, Neeta @ Geeta Rani died at the spot, whereas, Karamjit Singh had sustained injuries on vital organs. Thus, it is evident that on account of two vehicles, one after the other, to be involved in the accident, as a result whereof, Karamjit Singh had sustained injuries.

The present case is thus a case of composite negligence, where injuries have been caused by combined wrongful act of joint tortfeasors. In a case of accident caused by negligence of joint tortfeasors, all the persons, who aid or counsel or direct or joint in committal of a wrongful act, are liable. In such a case, the liability is always joint and several. The owner, driver and insurer of one of the vehicles can be sued and it is not necessary to sue the owner, driver and insurer of both the vehicles. The claimant may implead the owner, driver and insurer of both the vehicles or any one of them.

Just like in the present case, the tortfeasors of both the vehicles have been impleaded in the claim petition before learned Tribunal. Both the driver were held to have contributed in causing of the accident. But however, their contribution to the extent of negligence, as such, has not been worked upon by learned Tribunal. As per relief clause, their liability has been held to be joint and several. Looking at the manner of accident, it is a

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case of composite negligence. Such being the position, the insurance company, as such, cannot shrug away from its liability by making payment of 50% of the awarded amount.

Even if, for all intents and purposes, it is taken to be a case of contributory negligence, as pleaded by the insurance company, then also, the insurance company, ought to have challenged the impugned Award, vide which the liability was held to be joint and several and wherein, the percentage of the negligence, as such of the joint tortfeasors was not worked upon. However, no such appeal has been filed to assail the said Award.

In the given circumstances, by way of filing the objections, in pursuance of deposit of 50% of the compensation, the insurance company could not evade the liability and precisely, on this account, learned Executing Court has erroneously held the insurance company to have discharged its liability, even though, its name has not been deleted from the array of JDs.

In the light of the aforesaid observations, petitioner Karamjit Singh, in whose favour, the compensation has been awarded, in view of the relief, so granted by learned Tribunal, is entitled to recover the entire compensation from either of the parties of vehicle involved, who had been impleaded in the claim petition.

So far as, *inter se* liability of joint tortfeasors having not been worked upon, the petitioner, as such, cannot be deprived by working the liability of the insurance company to the extent of 50%, though, no observation, with regard to the same having been made by learned Tribunal. The extent of negligence of the joint tortfeasors, in such a case, is immaterial for the

satisfaction of the claim of the petitioner-claimant.

Hence, both the revision petitions are hereby accepted and the findings, so recorded by learned Executing Court vide impugned orders dated 30.10.2015 and 17.01.2018, with regard to issuance of warrants of attachment of property of JD No.1 and about insurance company, having nothing to pay in the execution petition, beyond 50% (which has already been paid), are hereby set aside.

September 25, 2023
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No