

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-2070-2024

DATE OF DECISION: 30.04.2024

National Insurance Co. Ltd.

.....Petitioner

VERSUS

Natha Singh and others

.....Respondents

CORAM HON’BLE MR. JUSTICE GURBIR SINGH

Present Mr.Aseem Aggarwal, Advocate,
 for the petitioner.

GURBIR SINGH, J

1. Challenge in this revision petition is to the order dated 06.01.2024, passed by learned Motor Accident Claim Tribunal, Bathinda, whereby application moved by the petitioner for impleading Nazam Singh son of Gurdial Singh (driver), Gurdeep Singh son of Gurjant Singh (owner) and Insurance Company of motor cycle No. PB-62-A-4402 has been dismissed.
2. Facts necessary for the disposal of the instant revision petition are that Natha Singh, respondent no.1 filed a Claim Petition under Section 166 of the Motor Vehicle Act against the owner, driver and Insurance Company of the bus No.PB-03AF-0574 on the ground that on 19.06.2015, he was travelling in the said bus. When the said bus reached near the main gate of the Sportking Dhaga Mill Jeeda, main road Goniana-Bajakhana, it was driven at a very high speed in a rash and negligent manner, a motorcycle No. PB-62A-4402, which was being driven by one Nazam Singh son of Gurdayal Singh, all of a sudden, in order to cross the road and go on to other side in the fields, the driver of the mini bus applied sudden brakes. Due to high speed of the bus, same became uncontrolled and turned turtle, as a result of which, claimant suffered injuries and his right arm was amputated

from the shoulder joint. The accident took place due to rash and negligent driving of the mini bus No.PB-03-AF-0574 by its driver and also suffered statement accordingly and police assured to take action against both the driver of the mini bus as well as of the driver of the motorcycle.

3. Counsel for the petitioner has argued that the petitioner moved an application for impleading Nazam Singh son of Gurdial Singh (driver), Gurdeep Singh son of Gurjant Singh (owner) and Insurance Company of motor cycle No. PB-62-A-4402 as a party to the suit but said application has been dismissed. It is further submitted that FIR was correctly recorded by the claimant that accident took place due to rash and negligent driving of the motorcyclist but in the claim petition the claimant shifted the blame on the bus but also said that he was assured by the police to take action against both the vehicles. Claimant had not deliberately impleaded driver, owner and insurance company of the motor cycle. In support of his contentions, reliance has been placed upon the law laid down by this Court in **Shanti Devi v. Balbir Singh and others 2014(4) PLR 486.**

4. I have heard the submissions of the learned counsel for the petitioner.

5. In **Khenyei versus New India Assurance Co. Ltd. And ors. 2015 AIR (Supreme Court) 2261**, the issue before the Hon'ble Apex Court was whether it was open to the claimant to recover entire compensation from one of the joint tortfeasors particularly in an accident caused by composite negligence of two vehicles. The Apex Court held in paras no.17 and 22 as under:-

“17. The question also arises as to the remedies available to one of the joint tortfeasors from whom compensation has been recovered. When the other joint tortfeasor has not been impleaded, obviously question of negligence of non-impleaded driver could not be decided. Apportionment of composite negligence cannot be made in the absence of impleadment of joint tortfeasor. Thus, it would be open to the impleaded joint tortfeasors after making payment of compensation, so as to sue the other joint tortfeasor and to recover from him the contribution to the extent of his negligence. However, in case when both the tortfeasors are before the court/Tribunal, if evidence is sufficient, it may determine the extent of their negligence so that one joint tortfeasor can recover the

amount so determined from the other joint tortfeasor in the execution proceedings, whereas the claimant has right to recover the compensation from both or any one of them.

22. What emerges from the aforesaid discussion is as follows :

22.1. In the case of composite negligence, the plaintiff/claimant is entitled to sue both or any one of the joint tortfeasors and to recover the entire compensation as liability of joint tortfessors is joint and several.

22.2. 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.

22.3. In case all the joint tortfesors 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 fortfeasors is only for the purpose of their inter se liability so that one may recover the sum from the other after making whole of the 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 the main case one joint fortfesor can recover the amount from the other in the execution proceedings.

22.4. 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 decrees or award.”

6. Thus, it is settled by the Apex Court that in case of composite negligence, it is open for the claimant to sue one of the joint tortfeasors. The claimant cannot be forced to seek relief against the other tortfeasor. So, claimant cannot be forced to implead driver, owner and insurer of the motorcycle.

7. I do not find any illegality in the order passed by the learned Tribunal.

8. The petition being without merit is hereby dismissed in *limine*.

30.04.2024
mamta

(GURBIR SINGH)
JUDGE

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