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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CM(M) 966/2023**

VIRENDER KUMAR & ORS. Petitioners

Through: None.

versus

SOMVIR & ORS. Respondents

Through: Mr. Navneet Kumar and Mr.
AshwaryKathed, Advs. for R-
3/Insurance Company

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER

07.02.2024

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1. None appeared on behalf of the petitioners/claimants when the matter was called.
2. Having heard learned counsel for respondent No.3/Insurance Company, this Court finds that there is a trivial issue of law and facts involved in the present matter.
3. The petitioners/claimants are aggrieved of the order dated 02.02.2023, passed by the learned Presiding Officer, MACT, North-West District, Rohini Courts, Delhi, whereby the application moved by the applicant/respondent No.3/Insurance Company under Order I Rule 10(2) of the CPC, was allowed and Naveen Kumar, driver of the Santro Car bearing Registration No. DL-3CAP-1732, as well as the owner and insurance company of the said vehicle have been impleaded as parties to the ongoing claim petition filed by the petitioners/claimants.



4. Shorn off unnecessary details, evidently the deceased was a co-passenger in the aforesaid car and the car had struck against the other offending vehicle i.e. a truck which was parked on the side way on the Highway, bearing Registration No. HR-63A-9091.

5. Learned counsel for the respondent No.3/Insurance Company has relied on the decision in **Khenyei v. New India Assurance Company Limited and Others** (2015) 9 Supreme Court Cases 273 and reference was invited to paragraph (22) containing the conclusions in respect of issues regarding a plea of composite negligence and it reads as under:-

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

2.1. 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 tortfeasors is joint and several.

22.2. In the case of composite negligence, apportionment of compensation between two tortfeasors vis-à-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 tort-feasors 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 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 tort-feasor can recover the amount from the other in the execution proceedings.”

6. On a perusal of the entire record besides the case law relied on, this court finds that there is no legal infirmity, perversity or incorrect approach adopted by the learned Trial Court in passing the impugned



order dated 02.02.2023. The claim petition is at the initial stage and that the parties are yet to lead evidence. The issues regarding whether or not there was any composite negligence on the part of driver of the other vehicle who have now been impleaded in the proceedings, is a matter of trial.

7. In view of the foregoing discussion, the present petition is dismissed. Nothing contained herein shall tantamount to an expression of opinion on the merits of the case.

8. A copy of this order be given to the learned Trial Court for information and necessary compliance.

DHARMESH SHARMA, J

FEBRUARY 7, 2024/sp