

Form No. J(2)

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

FMA 1217 of 2022

**Bajaj Allianz General Insurance Company Limited
Versus
Manju Lohar & Ors.**

For the Appellant : Mr. Rajesh Singh.

For the Respondents : Mr. Ali Imam Shah.

Heard & Judgment on : 25th March, 2025.

Ananya Bandyopadhyay, J:

1. Both the Learned Advocates representing the appellant/Insurance Company and the respondents/claimants are present.
2. The instant appeal had been filed against the judgment and award dated 04.06.2018 passed by the Learned Judge, Motor Accident Claims Tribunal, Fast Track Court, Suri, Birbhum in M.A.C. Case No. 121/2013.
3. An application under Section 166 of the Motor Vehicles Act had been filed due to the death of the victim in an accident which took place on 25.04.2013 at about 05:10 hours on Suri-Dubrajpur

Road (NH-60) near Galakata Bridge with the involvement of the offending vehicle being a 'bus' bearing registration no. WB-73A/9995 and a Truck bearing registration no. WB41E-0548. The victim being a passenger of the Bus had received injuries due to a head on collision between both the aforesaid vehicles and later on expired succumbing to the injuries.

4. The Learned Advocate representing the appellant/Insurance Company submitted that the complaint dated 25.04.2013 did not mention the involvement of the bus bearing registration no. WB-73A-9995 in the accident actively participating and being responsible for the occurrence of the accident since it had been categorically mentioned that the truck bearing registration no. WB-41E-0548 had collided with the bus. Moreover, the charge-sheet filed on 14.06.2013 exonerated the action of the driver of the offending bus to have been a party to the accident on his own negligence. The learned Tribunal had apportioned the compensation awarded between the appellant/Insurance Company and the respondent no. 6/Insurance Company on the basis of the oral evidence of P.W.1 being the wife of the deceased victim who stated there was a head on collision between the bus and the truck near Galakata Bridge. It was further submitted that the appellant/Insurance Company was not liable to pay the compensation since there was no fault actively or otherwise on

the part of the driver of the aforesaid bus to have commissioned the accident in view of the charge-sheet submitted by the Investigating Officer, as aforesaid.

5. The learned Advocate representing the respondents/claimants submitted to have received 50% of the compensation amount as deposited by the respondent no. 6. It was further submitted by the learned Advocate representing the respondents/claimants that the claimants were nowhere to be deprived of the compensation granted by the learned Tribunal in a dispute between both the vehicles in question with regard to their involvement and liability and sought for the balance amount of 50% of the compensation to be paid to the claimants/respondents.
6. Considering the rival submissions of the learned Advocates representing both the parties, the learned Tribunal in its impugned Judgment and order, *inter alia*, stated that "*On perusal of the testimony of P.Ws. exhibited documents and other materials on record, it appears that petitioners have substantiated their contentions as made out in their claim application regarding the accidental death of the deceased Kamal Lohar. The petitioners have contended that there was a head on collision in between both the offending vehicles being the Bus no. WB-73A-9995 and the Truck no. WB-41E-0548 and as such, the*

drivers of both the vehicles were responsible for the accidental death of the deceased. The PW-1 is an eye witness to the accident and she has categorically stated that the accident occurred due to the negligence of the driver of the Bus as well as the Truck. This evidence of PW-1 shows that there was a head on collision in between both the involved vehicles and there is nothing to show that the drivers of either of the said vehicles were not negligent. There is no evidence from the side of OPs to contradict the testimony of the PW-1. Thus, the fact remains that the accidental death of the deceased Kamal Lohar occurred due to head on collision between both the vehicles. The incident of head on collision between vehicles generally occur due to composite negligence of the drivers of the involved vehicles and in such cases it is difficult to assess the exact degree of negligence of a particular driver”.

7. The evidence of P.W. 1, the wife of the deceased victim revealed that *“Bus was proceeding from Siliguri to Salua, Pashim Midnapur, there was a head on collusion between the Bus and Truck near Galakata Bridge”*. The deposition of P.W. 1 did not specifically mention that the head on collision between the bus and the truck was due to the negligent act on the part of either of the two vehicles. It cannot be assessed from such a mere statement that either the bus or the truck as, aforesaid, was

solely responsible for the accident since the mode and manner in which either of the vehicles was driven had not been explicitly described in the evidence. The initial complaint as well as the charge-sheet revealed that the bus boarding the passengers was not responsible to cause the accident. However, the role of the individual vehicle cannot be decided at this juncture without proper evidence to have been adduced. The learned Tribunal did not have the scope to adduce evidence with regard to the role of the individual vehicle and, therefore, should not have sacrosanctly relied on the deposition of the P.W. 1 which otherwise was not distinct to impute both the bus as well as the truck in a head on collision which might have been a situation where both the offending vehicles could have been negligent or either one of the same could have been at fault.

8. In the decisions cited in ***Civil Appeal No. 4244 of 2015 (Arising out of SLP (C) No. 14015/2010*** the Ho'ble Supreme Court observed as follows:-

*"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 $2/3^{\text{rd}}$ and $1/3^{\text{rd}}$ of respective drivers. Thus, the vehicle-trailor-truck which was not insured with the insurer, was negligent to the extent of $2/3^{\text{rd}}$. 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-à-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 tort feasons 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 tort feasons 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 feason 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".*

9. The appellant/Insurance Company is directed to pay the balance amount of 50% of the compensation in favour of the claimants/respondents and, thereafter, is at liberty to institute their claim against the respondent no. 6 at a separate forum agitating its right to be exonerated in view of the complaint filed on behalf of the claimants as well as the charge-sheet filed by the Investigating Officer and also otherwise claim for determination of extent of composite negligence of the drivers of both the involved vehicles at the appropriate forum.
10. The learned Advocate representing the appellant/Insurance Company submitted that the entire compensation amount due to the appellant/Insurance Company had been deposited at the office of the Registrar General, High Court, Calcutta along with interest which should be disbursed in favour of the respondents/claimants after proper identification along with interest accrued thereon.
11. The instant appeal is disposed of accordingly.
12. The pending applications, if any, stands disposed of.
13. Copy of the order be sent to the Department as well as the concerned tribunal as expeditiously as possible.

(Ananya Bandyopadhyay, J.)

Srimanta, A.R. (Ct.)

