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

(314)

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Date of Decision: 09.12.2025

Pooja Devi & others

--Petitioners

Versus

Davinder Kumar & others

--Respondents

CORAM:- HON'BLE MR. JUSTICE VIKAS BAHL.

Present:- Ms. Ekta Thakur, Advocate,
Ms. Sakshi Sharma, Advocate and
Ms. Shikha, Advocate for the petitioners.

Mr. Punit Jain, Advocate for respondent no.3.

VIKAS BAHL.J (Oral)

1. Present revision petition has been filed by the claimants, under Article 227 of the Constitution of India for setting aside the impugned order dated 06.12.2023, whereby the Tribunal has allowed the application filed under Order 1 Rule 10 CPC by the respondent no.3, Insurance Company to implead the owner of Bus No. HP-64-6474, in the claim petition filed by the petitioners.

ARGUMENTS ON BEHALF OF THE PETITIONERS

2. Learned counsel for the petitioners has submitted that in the present case the petitioners, who are the Legal Representatives of Arun Kumar, had filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 claiming compensation on account of death of said Arun Kumar which had taken place in a motor vehicular accident. It is submitted that it was the case of the petitioners/claimants that the accident had occurred on



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account of the rash and negligent driving by respondent no.1-Davinder Kumar, who was the driver of the offending truck bearing no. HP-61-6028. It is submitted that in the present case, a reply was filed by the driver and the owner and the plea taken by them was that the accident had taken place on account of rash and negligent driving of the driver of the bus which was being driven by Arun Kumar, of which the present petitioners are the Legal Representatives. It is argued that similarly even the Insurance Company had taken the said plea. It is submitted that on the basis of the said plea the moot question which would arise for consideration before the Tribunal would be as to whether respondent no.1 was driving the truck in question in a rash and negligent manner and had thus caused the death of Arun Kumar or not. It is submitted that the onus of proving the said issue is on the petitioners and in case the petitioners succeed in the same, then, compensation would be awarded to the petitioners.

3. It is submitted that the Insurance Company, however, to unnecessarily delay the proceedings and to create confusion had moved an application under Order 1 Rule 10 CPC for impleading the Himachal Road Transport Corporation, (HRTC), owner of bus no. HP-64-6474 as respondent no.4, inspite of the fact that no relief was claimed by the petitioners against them. It is submitted that the Tribunal vide the impugned order dated 06.12.2023 wrongly allowed the said application and had ordered the impleadment of said HRTC as respondent no.4. Learned counsel for petitioners has submitted that it is a matter of settled law that the plaintiff is the *dominus litis* and it is for the petitioners/claimants to implead all such persons against whom the relief is claimed and the

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petitioners/claimants cannot be forced to litigate against the persons against whom neither any relief is sought nor is a necessary party in the facts and circumstances of the case. It is argued that in case the respondent wishes to examine anybody in its support, then it is open to the respondent to examine any witness, but the same cannot be a ground to implead the said party. It is submitted that the issues in the present case were framed on 01.03.2024 and the entire evidence has been led by all the parties concerned and the case is now fixed for arguments. Learned counsel for petitioners has further submitted that the Coordinate Bench of this Court vide order dated 02.02.2024 was pleased to stay the operation of the impugned order and had ordered that the proceedings would continue and in view of the same, proceedings are continuing and the case is now fixed for final arguments. It is argued that allowing of the said application would result in unnecessary delay in the proceedings.

ARGUMENTS ON BEHALF OF RESPONDENT NO.3

4. Learned counsel for respondent no.3, on the other hand, has opposed the present petition by submitting that the order impleading the HRTC, who was owner of the bus in question, as respondent no.4 is in accordance with law and deserves to be upheld. It is submitted that as per the FIR got registered by one Kashi Ram, it is the driver of the bus i.e. Arun Kumar, who has been stated to be negligent and thus, in the said circumstances, it was necessary to implead the owner of the bus. In support of his arguments learned counsel for respondent no.3 has relied upon a judgement of the Coordinate Bench of this Court in **Smt. Shanti Devi Vs.**

Sh. Balbir Singh and others (FAO-2409-1994 decided on 26.05.2014)



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and connected appeal.**ANALYSIS & FINDINGS**

5. This Court has heard learned counsel for the petitioners as well as learned counsel for respondent no.3 and has perused the paper book and is of the opinion that the present revision petition is meritorious and deserves to be allowed and the impugned order dated 06.12.2023 is illegal and deserves to be set aside for the reasons detailed hereinafter. It would be relevant to note that notice was issued to respondents no.1 and 2 also and as has been recorded in the order dated 13.11.2025, they were duly served but none has appeared on their behalf.

6. The petitioners in the year 2022 had filed a claim petition under Section 166 of the Motor Vehicles Act claiming compensation on account of the death of Arun Kumar, which had taken place in a motor vehicular accident on 31.05.2022. The petitioners are the widow, two minor children and the old mother of the said deceased. It was the specific case of the petitioners in the claim petition that respondent no.1 herein, who was the driver of the offending truck no. HP-61-6028 was driving the said truck in a very rash and negligent manner and had hit the bus no. HP-64-6474, which was being driven by Arun Kumar, who died on account of the injuries suffered in the said accident. It was the specific case of the petitioners that the accident took place on account of rash and negligent driving of the said respondent no.1. The relevant portion of the claim petition is reproduced hereunder:-

***“23. CAUSE OF ACCIDENT WITH BRIEF
DESCRIPTION:***



On 31.05.2022 deceased Arun Kumar being driver of HRTC had started from Shimla to Dharamshala driving HRTC Bus No.HP-64-6474. When he reached in the area of village Nasbal falling under Police Station Ghumarwin, District Bilaspur and was at normal speed on his correct left side in the meantime respondent No.1 came driving offending Truck No.HP-61-6028 from the side of Dadhol at a very high rash speed and in negligent manner and hit the above said bus including Arun Kumar deceased. As a result of which Arun Kumar driver of above such HRTC bus suffered multiple injuries on vital organs of his body, which proved fatal for him as he died on the same day immediately after reaching the hospital.

This accident took place due to rash and negligent driving of respondent No. 1.”

7. It was the case of respondents no.1 and 2, who were the driver and owner of the truck, that it was Arun Kumar, who was the driver of the offending bus, who was rash and negligent in driving the bus and thus the present petition filed by the LR's of said Arun Kumar deserved to be dismissed on the said ground alone. The respondent no.3-Insurance Company had also taken a plea that the accident had taken place on account of rash and negligent driving of the deceased who was the driver of the bus being owned by HRTC and it was he who was solely responsible for the said accident. The Tribunal had framed issues and a copy of the said order framing issues has been handed over to the Court, during the course of the arguments and the issues which had been framed are reproduced hereunder:-

1. Whether respondent No.1 had driven Truck bearing No.HP116028 in a rash and negligent manner at about 12.50 pm on 31.05.2022 in the area of Village Nasbal, PS Ghumarwin, District Bilaspur, HP and had caused



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the death of Arun Kumar? OPA

2. *If issue No.1 is proved, whether claimants are entitled to compensation? If so, from which of the respondents and to what extent. OPA*
3. *Whether petition is not maintainable? OPR*
4. *Whether claimants have no locus standi to file the present petition? OPR3*
5. *Whether respondent No.1 was not having valid driving licence and travel documents of Truck bearing No.HP116028 on the date of alleged occurrence? OPR3*
6. *Relief."*

8. A perusal of the above issues would show that the moot issue in the present case is Issue No.1 under which the onus had been placed on the applicants/petitioners/claimants to prove that respondent no.1 was driving the truck bearing no. HP-61-6028 in a rash and negligent manner and on account of the same, death of Arun Kumar had occurred. It is not disputed before this Court that all the parties concerned have already led their evidence in support and against the said issue and the case is now fixed for final arguments. Respondent no.3-Insurance Company, however moved an application under Order 1 Rule 10 CPC for impleading the HRTC, owner of Bus No. HP-64-6474 as a party. The said application has been allowed vide impugned order dated 06.12.2023 by the Tribunal, primarily on the plea that the version given in the FIR is not similar to the version given by the petitioners in the claim petition. The said order is the subject matter of challenge in the present revision petition. The said order is contrary to settled law and deserves to be set aside.

9. It is a matter of settled law that it is for the plaintiffs/claimants/petitioners to implead all those persons as parties against whom the relief has been claimed. In the present case, the petitioners/claimants are claiming relief against the owner and driver of the



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truck, in question and the Insurance Company, which insured the said truck, on the plea that respondent no.1, driver of the said truck was rash and negligent in his driving. No relief has been claimed by the petitioners against the owner of the bus and thus the question of the petitioners requiring the said owner to be impleaded, does not arise. The petitioners who are *dominus litis* cannot be forced to litigate against persons against whom the petitioners are not seeking any relief, more so, when the entity sought to be impleaded is not even a necessary party in the case. It is for the petitioners to prove Issue No.1 to the effect that respondent no.1 was driving the truck in question negligently. It is for the respondents to lead all evidence also, so as to show that respondent no.1 was not rash or negligent in driving the vehicle and it was open for them to produce on record the said FIR and all the documents or evidence in support of the said stand. In the said circumstances, it cannot be said that the owner of the bus is a necessary or a proper party, more so, when no relief is sought against them.

11. The Hon'ble Supreme Court in **Khenyei Vs. New India Assurance Co. Ltd. & Ors., 2015(9) SCC 273** held as under:-

“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 tort feorsors 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 feorsors 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 feorsor 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 feorsors. In such a case, impleaded joint tort feorsor should be left, in case he so desires, to sue the other joint tort feorsor in independent proceedings after passing of the decree or award.

19. Resultantly, the appeals are allowed. The judgment and order passed by the High Court is hereby set aside. Parties to bear the costs as incurred.”

11. In the above said case, the Hon'ble Supreme Court while considering the case of composite negligence i.e. the case in which there were joint tort feorsors, observed that the plaintiff/claimant was entitled to sue all or any of the joint tort feorsors and to recover the entire compensation, as liability of a joint tort feorsors, is joint and several. Thus, in a case, where two or more vehicles are involved in an accident and as per the case of the plaintiffs/claimants, drivers of both the vehicles are negligent in causing the accident, it is open for the plaintiffs/claimants to sue all or any of the joint tort feorsors and to recover the entire compensation from the



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person, who has been impleaded as a party. The said judgement, thus, fully furthers the principle of *dominus litis*. From the above said judgment, it is apparent that it is not incumbent upon the plaintiffs/claimants to implead all the joint tort feasons, although, it could be the case of the claimants/plaintiffs that all the joint tort feasons were jointly negligent for the accident.

12. In the present case, it is not even the case of the plaintiffs/claimants that any of the persons other than respondent no.1, who has already been impleaded as a party, was responsible for the accident and thus, in the said circumstances it cannot even remotely be said that the petitioners/claimants were required to implead the owner of the bus as a party to the proceedings. The observations in the impugned order to the effect that the version in the FIR is different from the version given in the claim petition, cannot be made basis for impleading the owner of the bus, as it is upon the party, who has already been impleaded to produce any document, including the FIR, to raise pleas in support of their pleadings. The impleadment of the owner of the bus cannot even be allowed in order to only find out as to whether the petitioners/claimants have made any claim under the Workmen's Compensation Act. It is always open to the parties to summon the relevant witnesses including the owner of the bus to lead evidence regarding the said aspect. Entities cannot be made parties so as to enable the respondents to prove their defence. It is for the respondents to prove their defence.

13. Thus, the impugned order dated 06.12.2023 deserves to be set aside.



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15. On 02.02.2024, a Coordinate Bench of this Court was pleased to pass the following order:-

“Present: Ms. Ekta Thakru, Advocate for the petitioners.

*Learned counsel for the petitioners has relied upon **Khenyei vs. New India Assurance Company Ltd, 2015 ACJ 1441 (SC) and Shri. G. Chandrashekharan Shivam and others vs. Mr. Rajkumar Agarwal and others 2023 ACJ 2349 (Bom).** It is contended that in the case of joint tortfeasors from whom compensation is to be recovered, a choice in law has been given to the claimant to proceed against anyone of such joint tortfeasor, as the liability would be joint and several. Thus, the dominus litis cannot be forced to litigate against the party against whom he does not wish to proceed, which shall remain at his own risk and cost.*

Notice of motion returnable for 18.04.2024.

Liberty is granted to additionally serve the respondents through the counsel representing them before the Tribunal.

In the meanwhile, operation of the order dated 06.12.2023 shall remain stayed, however, the proceedings to continue.”

16. It is not in dispute that the entire evidence has been led by all the parties and the case is now fixed for arguments and thus allowing the application under Order 1 Rule 10 CPC for impleadment and upholding the impugned order would result in delaying the proceedings endlessly, inasmuch as, the added respondent would have to be given the right to file written statement and the issues would be framed again and the entire evidence would have to be led again and thus the same would result in *de novo* proceedings. The petitioners are the claimants, who are seeking compensation for the death of Arun Kumar, which had taken place in a



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motor vehicle accident and thus the said delay in proceedings would cause irreparable loss to the petitioners.

17. The judgement in the case of **Smt. Shanti Devi** (supra), relied upon by the learned counsel for respondent no.3 does not further the case of the respondents and is based on different facts. The said case was a case in which the appeal had been filed by the claimants against the final decision given by the Tribunal vide which the Tribunal had dismissed the petition on the ground that it was only the motorcyclist who was responsible for the accident but since the rider of the motorcycle had not been impleaded as a party, the claim petition was dismissed. The Coordinate Bench of this Court, after considering the facts of the said case, came to the conclusion that it was also the driver of the truck therein who was responsible for the accident and thus after considering the factual position in the case, came to the conclusion that the Tribunal should not have dismissed the case for a technical reason. It was observed that since the driver of the truck was also responsible, thus the findings of the Tribunal regarding exoneration of the Insurance Company, who had insured the said truck, was set aside and the Insurance Company was held liable and the appeal filed by the claimants, was allowed. Even in the said case, it was observed by the Coordinate Bench that the claimants were right in suing any of the tortfeasors consistent with their pleadings to the effect that the driver of the truck was responsible for the accident. It was only in the peculiar facts and circumstances of the case that the Coordinate Bench had come to the conclusion that it was also the driver of the truck, who was also responsible for the accident, and had granted compensation to the claimant. The said

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judgement does not further the case of the respondents.

18. Keeping in view the above said facts and circumstances, the present revision petition is allowed and the impugned order dated 06.12.2023 is set aside and the application filed by the respondent no.3 for impleading the HRTC as respondent no.4, is dismissed.

19. It is clarified that the observations made in the present order are only for the purpose of deciding the present revision petition in which the challenge is to the order vide which the application filed under Order 1 Rule 10 CPC by the respondent no.3-Insurance Company has been allowed and should not be construed as a final expression on the merits of the case and the Tribunal would decide the case independently after taking into consideration the evidence, documents and the arguments raised by both the parties, uninfluenced by the observations made in the present order.

(VIKAS BAHL)
JUDGE

09.12.2025

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Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No