Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.4244 OF 2015
[Arising out of SLP (C) No.14015/2010]

Khenyei ... Appellant

Vs.

New India Assurance Co. Ltd. & Ors. ... Respondents

With CA No.4245/2015 @ SLP [C] No.14699/2010; CA No.4246/2015 @ SLP [C] No.14700/2010; CA No.4247/2015 @ SLP [C] No.14701/2010; CA No.4248/2015 @ SLP [C] No.14743/2010; CA No.4249/2015 @ SLP [C] No.14847/2010; and CA No.4250/2015 @ SLP [C] No.14865/2010.

J U D G M E N T

ARUN MISHRA, J.

1. Leave granted.

2. In the appeals, the main question which arises for consideration is, whether it is open to a claimant to recover entire compensation from one of the joint tort feasors, particularly when in accident caused by composite negligence of drivers of trailor-truck and bus has been found to 2/3rd and 1/3rd extent respectively.

3. In the instant cases the injuries were sustained by the claimants when two vehicles – bus and trailor-truck collided with each other. The New India Assurance Co. Ltd. is admittedly the insurer of the bus. However, on the basis of additional evidence adduced the High Court has come to the conclusion that the New India Assurance Co. Ltd. is not the insurer of the trailor-truck, hence is not liable to satisfy 2/3rd of the award.

4. It is a case of composite negligence where injuries have been caused to the claimants by combined wrongful act of joint tort feasors. In a case of accident caused by negligence of joint tort feasors, all the persons who aid or counsel or direct or join in committal of a wrongful act, are liable. In such case, the liability is always joint and several. The extent of negligence of joint tort feasors in such a case is immaterial for satisfaction of the claim of the plaintiff/claimant and need not be determined by the court. However, in case all the joint tort feasors are before the court, it may determine the extent of their liability for the purpose of adjusting inter-se equities between them at appropriate stage. The liability of each and every joint tort feasor vis a vis to plaintiff/claimant cannot be bifurcated as it is joint and several liability. In the case of composite negligence, apportionment of compensation between tort feasors for making payment to the plaintiff is not permissible as the plaintiff/claimant has the right to recover the entire amount from the easiest targets/solvent defendant.

5. In Law of Torts, 2nd Edn., 1992 by Justice G.P. Singh, it has been observed that in composite negligence, apportionment of compensation between two tort feasors is not permissible.

6. In Law of Torts by Winfield and Jolowicz, 17th Edn., 2006, the author has referred to *Performance Cars Ltd. v. Abraham* [1962 (1) QB 33], *Baker v. Willoughby* 1970 A.C. 467, *Rogers on Unification of Tort Law: Multiple Tortfeasors; G.N.E.R. v. Hart* [2003] EWHC 2450 (QB),

Mortgage Express Ltd. v. Bowerman & Partners 1996 (2) All E.R. 836 etc.

and observed thus :

> "WHERE two or more people by their independent breaches of duty to the claimant cause him to suffer distinct injuries, no special rules are required, for each tortfeasor is liable for the damage which he caused and only for that damage. Where, however, two or more breaches of duty by different persons cause the claimant to suffer a single, indivisible injury the position is more complicated. The law in such a case is that the claimant is entitled to sue all or any of them for the full amount of his loss, and each is said to be jointly and severally liable for it. If the claimant sues defendant A but not B and C, it is open to A to seek "contribution" from B and C in respect of their relative responsibility but this is a matter among A, B and C and does not affect the claimant. This means that special rules are necessary to deal with the possibilities of successive actions in respect of that loss and of claims for contribution or indemnity by one tortfeasor against the others. It may be greatly to the claimant's advantage to show that he has suffered the same, indivisible harm at the hands of a number of defendants for he thereby avoids the risk, inherent in cases where there are different injuries, of finding that one defendant is insolvent (or uninsured) and being unable to execute judgment against him. Even where all participants are solvent, a system which enabled the claimant to sue each one only for a proportionate part of the damage would require him to launch multiple proceedings, some of which might involve complex issues of liability, causation and proof. As the law now stands, the claimant may simply launch proceedings against the "easiest target". The same picture is not, of course, so attractive from the point of view of the solvent defendant, who may end up carrying full responsibility for a loss in the causing of which he played only a partial, even secondary role. Thus a solicitor may be liable in full for failing to point out to his client that there is reason to believe that a valuation on which the client proposes to lend is suspect, the valuer being insolvent; and an auditor will be likely to carry sole responsibility for negligent failure to discover fraud during a company audit. A sustained campaign against the rule of joint and several liability has been mounted in this country by certain professional bodies, who have argued instead for a regime of "proportionate liability" whereby, as against the claimant, and not merely among defendants as a group, each

defendant would bear only his share of the liability. While it has not been suggested here that such a change should be extended to personal injury claims, this has occurred in some American jurisdictions, whether by statute or by judicial decision. However, an investigation of the issue by the Law Commission on behalf of the Dept of trade and Industry in 1996 led to the conclusion that the present law was preferable to the various forms of proportionate liability."

7. Pollock in Law of Torts, 15th Edn. has discussed the concept of composite negligence. The relevant portion at page 361 is extracted below :

"Another kind of question arises where a person is injured without any fault of his own, but by the combined effects of the negligence of two persons of whom the one is not responsible for the other. It has been supposed that A could avail himself, as against Z who has been injured without any want of due care on his own part, of the so-called contributory negligence of a third person B. It is true you were injured by my negligence, but it would not have happened if B had not been negligent also, therefore, you can not sue me, or at all events not apart from B. Recent authority is decidedly against allowing such a defence, and in one particular class of cases it has been emphatically disallowed. It must, however, be open to A to answer to Z: You were not injured by my negligence at all, but only and wholly by B's. It seems to be a question of fact rather than of law (as, within the usual limits of a jury's discretion, the question of proximate cause is in all ordinary cases) what respective degrees of connection, in kind and degree, between the damage suffered by Z and the independent negligent conduct of A and B will make it proper to say that Z was injured by the negligence of A alone, or of B alone, or of both A and B,. But if this last conclusion be arrived at, it is now quite clear that Z can sue both A and B.

At page 362 Author has observed as :-

"The strict analysis of the proximate or immediate cause of the event: the inquiry who could last have prevented the mischief by

> the exercise of due care, is relevant only where the defendant says that the plaintiff suffered by his own negligence. Where negligent acts of two or more independent persons have between them caused damage to a third, the sufferer is not driven to apply any such analysis to find out whom he can sue. He is entitled- of course, within the limits set by the general rules as to remoteness of damage- to sue all or any of the negligent persons. It is no concern of his whether there is any duty of contribution or indemnity as between those persons, though in any case he can not recover in the whole more than his whole damage."

8. In *Palghat Coimbatore Transport Co. Ltd. v. Narayanan*, [ILR (1939) Mad. 306], it has been held that where injury is caused by the wrongful act of two parties, the plaintiff is not bound to a strict analysis of the proximate or immediate cause of the event to find out whom he can sue. Subject to the rules as to remoteness of damage, the plaintiff is entitled to sue all or any of the negligent persons and it is no concern of his whether there is any duty of contribution or indemnity as between those persons, though in any case he cannot recover on the whole more than his whole damage. He has a right to recover the full amount of damages from any of the defendants.

9. In *National Insurance Co. Ltd. v. P.A. Vergis & Ors*. [1991 (1) ACC 226], it has been observed that the case of composite negligence is one when accident occurs and resulting injuries and damages flow without any negligence on the part of the claimant but as a result of the negligence on the part of two or more persons. In such a case, the Tribunal should pass a composite decree against owners of both vehicles. In *United India Fire &*

Genl. Ins. Co. Ltd. v. Varghese & Ors. [1989 2 ACC 483 = 1989 ACJ 472], it has been observed that in a case of composite negligence, the injured has option to proceed against all or any of the joint tortfeasors. Therefore, the insurer cannot take a defence that action is not sustainable as the other joint tort feasors have not been made parties. Similar is the view taken in *United India Fire & General Insurance Co. Ltd. v. U.E. Prasad & Ors*. [AIR 1985 Kar. 160]. In *Andhra Marine Exports (P) Ltd. & Anr. v. P. Radhakrishnan & Ors*. [AIR 1984 Mad. 358], it has been held that every wrong doer is liable for whole damages in the case of composite negligence if it is otherwise made out.

Similar is the view taken in *Smt. Kundan Bala Vora & Anr. v. State of U.P.* [AIR 1983 All. 409], where a collision between bus and car took place. Negligence of both the drivers was found. It was held that they would be jointly and severally liable to pay the whole damages. In *Narain Devi & Ors. v. Swaran Singh & Ors*. [1989 2 ACC 116 (Del.) = 1989 ACJ 1118] there was a case of composite negligence by drivers of two trucks involved in an accident which hit the tempo from two sides. The proportion in which the two vehicles misconducted or offended was not decided. It was held by the High Court that the Tribunal was right in holding the liability of tort feasors as joint and several.

10. A Full Bench of the High Court of Karnataka at Bangalore in Karnataka State Road Transport Corporation, Bangalore and etc. v. Arun

alias Aravind and etc. etc. [AIR 2004 Kar. 149] has affirmed the decision of another Full Bench of the same High Court in *Ganesh v. Syed Munned Ahamed & Ors*. [ILR (1999) Kar. 403]. A Division Bench referred the decision in *Ganesh*'s case (supra) on following two questions to the larger Bench :

> "1. If the proceedings are finally determined with an award made by the Tribunal and disposed of in some cases by the appeal against the same by the High Court, does the Tribunal not become functus officio for making any further proceedings like impleading the tort feasor or initiating action against him legally impermissible ?
> 2. What is the remedy of a tort feasor who has satisfied the award, but who does not know the particulars of the vehicle which was responsible for the accident?"

11. A Full Bench in *KSRTC v. Arun @ Aravind* (supra) while answering aforesaid questions has observed that it was a case of composite negligence and the liability of tort feasors was joint and several. Hence, even if there is non-impleadment of one of tort feasors, the claimant was entitled to full compensation quantified by the Tribunal. The Full Bench referred to the decision of a Division Bench of the Gujarat High Court in *Hiraben Bhaga & Ors. v. Gujarat State Road Transport Corporation* [1982 ACJ (Supp.) 414 (Guj.)] in which it has been laid down that it is entirely the choice of the claimant whether to implead both the joint tort feasors or either of them. On failure of the claimant to implead one of the joint tort feasors, contributory liability cannot be fastened upon the claimant to the extent of the negligence of non-impleaded joint tort feasors. It is for the

joint tort feasors made liable to pay compensation to take proceedings to settle the equities as against other joint tort feasors who had not been impleaded. It is open to the impleaded joint tort feasor to sue the other wrong doer after the decree or award is given to realize to the extent of others' liability. It has been laid down that the law in *Ganesh*'s case (supra) has been rightly laid down and it is not necessary to implead all joint tort feasors and due to failure of impleadment of all joint tort feasors, compensation cannot be reduced to the extent of negligence of non-impleaded tort feasors. Non-impleadment of one of the joint tort feasors is not a defence to reduce the compensation payable to the claimant. In our opinion, the law appears to have been correctly stated in *KSRTC v. Arun @ Aravind* (supra).

12. A Full Bench of Madhya Pradesh High Court in *Smt. Sushila Bhadoriya & Ors. v. M.P. State Road Transport Corpn. & Anr*. [2005 (1) MPLJ 372] has also laid down that in case of composite negligence, the liability is joint and several and it is open to implead the driver, owner and the insurer one of the vehicles to recover the whole amount from one of the joint tort feasors. As to apportionment also, it has been observed that both the vehicles will be jointly and severally liable to pay the compensation. Once the negligence and compensation is determined, it is not permissible to apportion the compensation between the two as it is difficult to determine the apportionment in the absence of the drivers of both the vehicles

appearing in the witness box. Therefore, there cannot be apportionment of the claim between the joint tort feasors. The relevant portion of decision of Full Bench is extracted hereunder :

> "When injury is caused as a result of negligence of two joint tort-feasors, claimant is not required to lay his finger on the exact person regarding his proportion of liability. In the absence of any evidence enabling the Court to distinguish the act of each joint tort-feasor, liability can be fastened on both the tort-feasors jointly and in case only one of the joint tort-feasors is impleaded as party, then entire liability can be fastened upon one of the joint tort-feasors. If both the joint tort-feasors are before the Court and there is sufficient evidence regarding the act of each tort-feasors and it is possible for the Court to apportion the claim considering the exact nature of negligence by both the joint tort-feasors, it may apportion the claim. However, it is not necessary to apportion the claim when it is not possible to determine the ratio of negligence of joint tort-feasors. In such cases, joint tort-feasors will be jointly and severally liable to pay the compensation.
>
> On the same principle, in the case of joint tort- feasors where the liability is joint and several, it is the choice of the claimant to claim damages from the owner and driver and insurer of both the vehicles or any one of them. If claim is made against one of them, entire amount of compensation on account of injury or death can be imposed against the owner, driver and insurer of that vehicle as their liability is joint and several and the claimant can recover the amount from any one of them. There can not be apportionment of claim of each tort- feasors in the absence of proper and cogent evidence on record and it is not necessary to apportion the claim.
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> To sum up, we hold as under:-
>
> (i) Owner, driver and insurer of one of the vehicles can be sued and it is not necessary to sue owner, driver and insurer of both the vehicles. Claimant may implead the owner, driver and insurer of both the vehicles or anyone of them.

> (ii) There can not be apportionment of the liability of joint tort-feasors. In case both the joint tort-feasors are impleaded as party and if there is sufficient material on record, then the question of apportionment can be considered by the Claims Tribunal. However, on general principles of Jaw, there is no necessity to apportion the inter se liability of joint tort-feasors.
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> Reference is answered accordingly. Appeal be placed before appropriate Bench for hearing."

13. In our opinion, the law laid down by the Madhya Pradesh High Court in *Smt. Sushila Bhadoriya* (supra) is also in tune with the decisions of the High Court of Karnataka in *Ganesh* (supra) and *Arun @ Aravind* (supra). However, at the same time, suffice it to clarify that even if all the joint tort feasors are impleaded and both the drivers have entered the witness box and the tribunal or the court is able to determine the extent of negligence of each of the driver that is for the purpose of inter se liability between the joint tort feasors but their liability would remain joint and several so as to satisfy the plaintiff/claimant.

14. There is a difference between contributory and composite negligence. In the case of contributory negligence, a person who has himself contributed to the extent cannot claim compensation for the injuries sustained by him in the accident to the extent of his own negligence; whereas in the case of composite negligence, a person who has suffered has not contributed to the accident but the outcome of combination of

negligence of two or more other persons. This Court in *T.O. Anthony v. Karvarnan & Ors*. [2008 (3) SCC 748] has held that in case of contributory negligence, injured need not establish the extent of responsibility of each wrong doer separately, nor is it necessary for the court to determine the extent of liability of each wrong doer separately. It is only in the case of contributory negligence that the injured himself has contributed by his negligence in the accident. 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. The relevant portion is extracted hereunder :

> "6. 'Composite negligence' refers to the negligence on the part of two or more persons. Where a person is injured as a result of negligence on the part of two or more wrong doers, it is said that the person was injured on account of the composite negligence of those wrong-doers. In such a case, each wrong doer, is jointly and severally liable to the injured for payment of the entire damages and the injured person has the choice of proceeding against all or any of them. In such a case, the injured need not establish the extent of responsibility of each wrong-doer separately, nor is it necessary for the court to determine the extent of liability of each wrong-doer separately. On the other hand where a person suffers injury, partly due to the negligence on the part of another person or persons, and partly as a result of his own negligence, then the negligence of the part of the injured which contributed to the accident is referred to as his contributory negligence. Where the injured is guilty of some negligence, his claim for damages is not defeated merely by reason of the negligence on his part but the damages recoverable by him in respect of the injuries stands reduced in proportion to his contributory negligence.
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> 7. Therefore, when two vehicles are involved in an accident, and

> one of the drivers claims compensation from the other driver alleging negligence, and the other driver denies negligence or claims that the injured claimant himself was negligent, then it becomes necessary to consider whether the injured claimant was negligent and if so, whether he was solely or partly responsible for the accident and the extent of his responsibility, that is his contributory negligence. Therefore where the injured is himself partly liable, the principle of 'composite negligence' will not apply nor can there be an automatic inference that the negligence was 50:50 as has been assumed in this case. The Tribunal ought to have examined the extent of contributory negligence of the appellant and thereby avoided confusion between composite negligence and contributory negligence. The High Court has failed to correct the said error."

15. The decision in *T.O. Anthony v. Karvarnan & Ors*. (supra) has been relied upon in *Andhra Pradesh State Road Transport Corpn. & Anr. v. K Hemlatha & Ors*. [2008 (6) SCC 767].

16. In *Pawan Kumar & Anr. v. Harkishan Dass Mohan Lal & Ors.* [2014 (3) SCC 590], the decisions in *T.O. Anthony* (supra) and *Hemlatha* (supra) have been affirmed, and this Court has laid down that where plaintiff/claimant himself is found to be negligent jointly and severally, liability cannot arise and the plaintiff's claim to the extent of his own negligence, as may be quantified, will have to be severed. He is entitled to damages not attributable to his own negligence. The law/distinction with respect to contributory as well as composite negligence has been considered by this Court in *Machindranath Kernath Kasar v. D.S. Mylarappa & Ors*. [2008 (13) SCC 198] and also as to joint tort feasors. This Court has referred to Charlesworth & Percy on negligence as to cause

of action in regard to joint tort feasors thus:

> "42. Joint tortfeasors, as per 10th Edn. of *Charlesworth & Percy on Negligence*, have been described as under :
>
> Wrongdoers are deemed to be joint tortfeasors, within the meaning of the rule, where the cause of action against each of them is the same, namely, that the same evidence would support an action against them, individually….. Accordingly, they will be jointly liable for a tort which they both commit or for which they are responsible because the law imputes the commission of the same wrongful act to two or more persons at the same time. This occurs in cases of (a) agency; (b) vicarious liability; and (c) where a tort is committed in the course of a joint act, whilst pursuing a common purpose agreed between them."

The question also arises as to the remedies available to one of the joint tort feasors from whom compensation has been recovered. When the other joint tort feasor 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 tort feasor. Thus, it would be open to the impleaded joint tort feasors after making payment of compensation, so as to sue the other joint tort feasor and to recover from him the contribution to the extent of his negligence. However, in case when both the tort feasors are before the court/tribunal, if evidence is sufficient, it may determine the extent of their negligence so that one joint tort feasor can recover the amount so determined from the other joint tort feasor in the execution proceedings, whereas the claimant has right to recover the compensation from both or any one of them. This Court in *National Insurance Co. Ltd. v. Challa Bharathamma & Ors*. [2004 (8) SCC 517] with

respect to mode of recovery has laid down thus :

> "13. The residual question is what would be the appropriate direction. Considering the beneficial object of the Act, it would be proper for the insurer to satisfy the award, though in law it has no liability. In some cases the insurer has been given the option and liberty to recover the amount from the insured. For the purpose of recovering the amount paid from the owner, the insurer shall not be required to file a suit. It may initiate a proceeding before the concerned Executive Court as if the dispute between the insurer and the owner was the subject matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. Before release of the amount to the claimants, owner of the offending vehicle shall furnish security for the entire amount which the insurer will pay to the claimants. The offending vehicle shall be attached, as a part of the security. If necessity arises the Executive Court shall take assistance of the concerned Regional Transport Authority. The Executing Court shall pass appropriate orders in accordance with law as to the manner in which the owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the Executing Court to direct realization by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle i.e. the insured. In the instant case considering the quantum involved we leave it to the discretion of the insurer to decide whether it would take steps for recovery of the amount from the insured."

17. In *Oriental Insurance Co. Ltd. v. Nanjappan & Ors*. [2004 (13) SCC 224] also, this Court has laid down thus :

> "8. Therefore, while setting aside the judgment of the High court we direct in terms of what has been stated in *Baljit Kaur*'s case [2004 (2) SCC 1] that the insurer shall pay the quantum of compensation fixed by the Tribunal, about which there was no dispute raised, to the respondents-claimants within three months from today. The for the purpose of recovering the same from the insured, the insurer shall not be required to file a suit. It may initiate a proceeding before the concerned Executing Court as if

> the dispute between the insurer and the owner was the subject matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. Before release of the amount to the insured, owner of the vehicle shall be issued a notice and he shall be required to furnish security for the entire amount which the insurer will pay to the claimants. The offending vehicle shall be attached, as a part of the security. If necessity arises the Executing Court shall take assistance of the concerned Regional Transport authority. The Executing Court shall pass appropriate orders in accordance with law as to the manner in which the insured, owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the Executing Court to direct realization by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle, the insured. The appeal is disposed of in the aforesaid terms, with no order as to costs."

18. 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 tort feasor is joint and several. In the instant case, there is determination of inter se liability of composite negligence to the extent of negligence of 2/3rd and 1/3rd of respective drivers. Thus, the vehicle – trailor-truck which was not insured with the insurer, was negligent to the extent of 2/3rd. It would be open to the insurer being insurer of the bus after making payment to claimant to recover from the owner of the trailor-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 tort feasor 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 tort feasors and to recover the entire compensation as liability of joint tort feasors is joint and several.

(ii) In the case of composite negligence, apportionment of compensation between two tort feasors 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 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 tort feasors 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 feasor 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 feasors. In such a case, impleaded joint tort feasor should be left, in case he so desires, to sue the other joint tort feasor 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.

.....CJI
(H.L. Dattu)

.....J.
(S.A. Bobde)

New Delhi;
May 07, 2015.

.....J.
(Arun Mishra)