

MACP/382/2010

Order

Registration No:MACP/382/2010
Registration Date:30-07-2010
Filing No:
Filing Date:30-07-2010
Decied On : 15/09/2015
Period.....:Y. M. D.
:05 : 01 : 16 :

**IN THE COURT OF 7th AD-HOC ADDITIONAL DISTRICT JUDGE,
AT**

Appellants :

1. LATIF AADAM JUNEJA
VILL MOTI RAYAN,TAL MANDVI - KACHCHH

Vs.

Respondents :

1. DINESHBHAI RUPJIBHAI DAMOR
VILL MALSA, TAL BHILODA,DIST SABARKANTHA
2. DEVRAJ LAXMAN KERASIYA
VILL HABAY,TAL BHUJ - KACHCHH.
3. BHARTI AXA GENERAL INS. CO.LTD.
4TH FLOOR, 401,402PANCHVATI, C.G. ROAD,AHMEDABAD.

Appearance:

H L AJANI, Advocate for the appellant.
, Advocate for respondent.

---: Order Below Exh.17 :---

1. Read the application filed by the opponent No.3, the insurance company. Though sufficient time and opportunity was given, the petitioner side has not filed any reply of present application.

2. According to the application submitted on part of the applicant that two vehicles were involved in the accident in question and the petitioner has filed this claim petition only against driver, owner and insurer (opponent Nos.1, 2 and 3) of the vehicle Tractor No.GJ-12-Z-1522 and have not impleaded driver, owner and insurer of the other vehicle, Motor Cycle No.GJ-12-AJ-3720 involved in the accident in question and on which the petitioner was traveling as pillion rider at the time of the accident as mentioned in the petition itself. It is also mentioned in the application that it is very necessary to bring other vehicle involved in the accident on record as party to distribute the amount of compensation between all the tort-feasor and also to avoid multiplicity of proceedings. It is also mentioned in application that the same is filed by putting reliance on 1989 ACJ 314, 2001 ACJ 940 Gujarat, 2005 ACJ 1062 Gujarat.

3. The petitioner side has made submission that its case is based on composite negligence ground and in such cases, as held by many judgments of Hon'ble Supreme Court and Hon'ble High Court, it is discretion of the claimant and he is entitled to file the compensation claim against any of joint tort pheasor. It is also mentioned that it is not at all necessarily required that second vehicle involved in the accident has to be joined as party, hence this application deserves to be dismissed.

4. Considering the petition and documents filed in support of the same, it appears without any dispute that there are two vehicles

involved in the accident in question and the petitioner has filed this claim petition against driver, owner and insurer of only one vehicle which is Trailor No.GJ-12-Z-1522. It is also apparently undisputed that the petitioner was traveling on Motor Cycle No.GJ-12-AJ-3720 or 3920 involved in the accident in question as pillion rider and the same was being driven by one Mr.Hanif Osman Juneja, who is not joined as party in this petition.

5. Since 1989, Hon'ble High Court of Gujarat has repeatedly observed that it is very much necessary that whenever such issue of joining so-called joint tort-feasor is raised before Tribunal, as far as possible, the Tribunal should not avoid the same and should see that all the tort-feasors are brought before the Tribunal and all the issues pertaining to composite negligence are decided in the same claim petition. It has been observed by Hon'ble High Court of Gujarat that,

"In view of the aforesaid position, without deciding this question finally either way, on an assumption that Tribunal's decision is technically correct, we would like to further observe as follows: Simply because technically it may be permissible, we hope the Tribunals will not adopt this easy course which may quickly dispose of matters. Such disposals will certainly sow the seeds for future litigation and it is bound to fructify the litigation. Therefore, whenever a plea for joining another joint tort-feasor is raised and prayed for, it would be better for the Tribunal to insist that all the joint tort-feasors be brought on record. At any rate when an application for joining party is submitted by a tort-feasor on record, we hope such application will be allowed almost as a matter of rule and practice and another joint tort-feasor will be joined as party defendant/opponent." [**Gujarat State Road Transport Corpn. v. Gurunath Shahu & Ors.(1989 ACJ 314)**]

"We entirely agree with aforesaid observations. Still, in the above referred case also, it is clearly held that it is settled legal

position that even if the liability of a joint tort-feasor is to the extent of 1 per cent, the entire amount, i.e., hundred per cent of the amount of compensation awarded can be recovered from the tort-feasor whose liability is adjudged to the extent of 1 per cent only and the omission to sue one of the joint tort-feasors will not disentitle the claimants from claiming full relief against one who is sued. However, we again emphasise that for the reasons stated in the above-referred to decision (**1989 ACJ 314**), when an application for joining party is submitted by one of joint tort-feasors on record, such application should be allowed almost as a matter of rule and practice and another joint tort-feasor should be joined as party defendant/opponent." [**Amarsi Jugalbhai Driver vs. Vijayaben Hemantlal Dhulia and Ors (1996 (3) GLR 493)**]

"It would always be better to sue all joint tort-feasors in one proceeding. It would not only enable the Tribunal to apportion negligence between the joint tort-feasors, but would also facilitate the task of claimants in recovering the amount of compensation awarded and in appropriate cases directions can always be issued by the Tribunal to joint tort-feasors to share the liability of paying compensation in proportion to negligence established on the record of the case." [**New India Assurance Co. Ltd. & Others Vs. Josnaben @ Jashuben Vallabhbhai & Others (2008 (4) GLR 2876)**]

Hon'ble High Court of Gujarat, in case of **New India Assurance Co. Ltd. vs Muna Maya Basant W/O Sher Bahadur (AIR 2001 Guj 304)** on which learned advocate for the opponent No.3 relied upon, has observed that,

"....where there are more than one tort-feasors technically a claim petition against one of the tort-feasors is not bad, but it is desirable that the Tribunal will not adopt the easy course which may quickly dispose of the matter. Such disposal gives rise to other litigations. Therefore, whenever a plea for joining another joint tort-feasor is raised and prayed for, it would be better for the

Tribunal to insist that all the tort-feasors are brought on record. If the application for joining party is submitted, the Tribunal will have to allow such application and join another tort-feasor. In view of such decision, if one of the tort-feasors is left out, either of the parties can move the Tribunal for his joinder and in that case, the Tribunal will have to allow the application and join the left-out tort-feasor as the opponent so that there may not have any scope for fresh or more litigations, or a mischief on the part of the claimant for claiming the amount again..."

6. Recently, on 07.05.2015, Hon'ble Supreme Court has also observed while discussing on the issue of composite negligence that, **"(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."

2015 (6) SCALE 194, KHENYEI Vs. NEW INDIA ASSURANCE Co. Ltd. & Ors.

7. In a case having similar facts, Hon'ble High Court of Gujarat has, not only observed but considering it as statutory mandate, held that,

"However, where the Tribunal finds that two or more vehicles are involved in the accident and their drivers are found negligent, it is under a statutory mandate to specify and apportion the amount proportionate to the responsibility of the owner and the driver of one vehicle and that of the other. The Tribunal while doing so only specifies the inter se liability of the owners/drivers of the vehicles found negligent in causing the accident and it does not affect the right of the claimant because the claimant is entitled in law to recover the entire compensation amount from all or any one of the tortfeasors jointly and severally. By doing so, the Tribunal completes adjudication between the concerned parties so that future litigation inter se the joint tortfeasors for contribution can be avoided. This is necessary because where both the owners/insurance companies contribute towards satisfaction of the award to the extent of their liability, there is no problem. The problem arises when the entire awarded amount is recovered by the claimant from the owner/insurance company of one of the vehicles. In such an eventuality, which would arise mostly where one of the vehicles is insured and the other is not insured, in which case, there is every likelihood that the entire awarded amount may be recovered by the claimant from insurance company of the insured vehicle. In such an eventuality, the party which satisfies the award should not be left remediless and should be in a position to recover the amount paid by it to the extent of the liability of the owner/driver of the other vehicle. Examining the matter from another angle, if the insurance company of the insured vehicle, under the very same award, is not permitted to recover the amount paid by it to the extent of the liability of the other vehicle it would amount to putting premium on not getting one's vehicle insured, inasmuch as the insurance company of the insured vehicle, in most cases, would alone have to satisfy the award and may not be in a position to recover the amount in proportion to the liability of the other vehicle from its owner, as a

consequence whereof the owner of the uninsured vehicle goes scot free. Such could not have been the intention of the legislature.

13. At this juncture, reference may also be made to the provisions of section 175 of the Act which bars the jurisdiction of the civil court to entertain any question relating to any claim for compensation which may be adjudicated by the Claims Tribunal for that area. In case, the Tribunal after apportioning the liability of the owners/insurance company of each of the offending vehicles does not specify the amount payable by each of the joint tortfeasors, insofar as the claimant is concerned, he can recover the entire amount of compensation from all the joint tortfeasors or any one of them. In case the claimant recovers the entire amount from the owner/driver/insurance company, as the case may be, of any one of the offending vehicles, the said party would, therefore, be left remediless as the proceedings before the Tribunal would have come to an end and the civil court would have no jurisdiction to entertain any question relating to the claim for compensation which has already been adjudicated by the Claims Tribunal. Besides, relegating such party to civil proceedings would lead to multiplicity of proceedings and would give rise to a possibility of conflicting findings between two different forums. Therefore, it is incumbent upon the Tribunal under the provisions of section 168 of the Act to specify the inter se liabilities of the insurer, owner or the driver, as the case may be, of the vehicles involved in the accident. As observed by the Delhi High Court in the case of Angoori Devi (supra), all this appears to be much ado about nothing because the Tribunal by doing so only specifies inter se liability of owners/drivers of vehicle found negligent to cause an accident and it does not affect the claimants anyway, be it a case of composite negligence because he/she is entitled in law to recover the entire compensation amount from all or any one of the tortfeasors jointly or severally.

14. Therefore, the Tribunal is not only competent to apportion and specify the inter se liabilities of the driver/owner/insurance company, as the case may be, of each of the offending vehicles, but there is a statutory mandate cast upon the Tribunal in a case of composite negligence to specify the inter se liabilities of the owner/driver/insurance company as the case may be, of each of the vehicles and thereafter to specify that in case the claimant recovers the entire awarded amount from the owner/driver/insurance company of one of the offending vehicles, then to the proportion of the liability of the owner/driver/insurance company of the other offending vehicle/vehicles, the award shall be treated as a decree between the owners/drivers/insurance companies, as the case may be, of the offending vehicles which has been adjudicated in favour of the party who has satisfied the award and against the party who has also been held liable to the extent of such liability. The party, who has satisfied the award, shall accordingly be entitled to execute the decree against the owner/driver/insurance company of the other offending vehicle/vehicles. It would also be permissible for such party to take recourse to the provisions of section 174 of the Act."

-2015 (1) GLR 216, Oriental Insurance Co. Ltd. Vs. Raval Rupsibhai Pasabhai (Decd) & Ors.

8. It is also not in dispute that F.I.R. is filed against the driver of the trailor. But, apart from considering criminal liability for the accident in question, this tribunal has to consider whether there is any composite liability of other vehicle involved in the accident in question or not. This tribunal is of the view that where two persons are involved in an accident, the injured can proceed at his option against both or either, and where only one party is sued, the other cannot contend that the second party is a necessary party. However, it would be better for the tribunal to implead that second party in order to avoid multiplicity of proceedings because if both joint tort-feasor 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. Also to see that there is no collusion between the applicant of such proceeding and the second party which is not sued upon, it would be better for the tribunal to implead that second party, which may, on adjudication of the claim petition, be proved joint tort-feasor and compositely liable to pay the compensation.

9. Facts of present petition are similar with facts of above referred cases before Hon'ble High Court, hence following the observation made by Hon'ble High Court of Gujarat and with a view that joining driver, owner and insurer of the other vehicle involved in the accident in question will not only facilitate the task of claimants in recovering the amount of compensation awarded but will remove the possibility of multiplicity of proceeding and chance of collusion or possibility of filing separate proceeding against driver, owner, insurer of that other vehicle in different forum by suppressing facts of present proceeding, this tribunal is of the view that this application requires to be allowed, hence I pass following order,

O R D E R

This application is allowed. Petitioner is directed to declare details regarding driver, owner and insurer, if any, of the other vehicle Motor Cycle No.GJ-12-AJ-3720 or 3920 as the case may be involved in the accident in question. Petitioner is directed further to join them in present petition as parties and to make necessary

amendment to the petition accordingly. Amended petition to be produced.

No order as to the costs.

Bhuj.

15.09.2015

Sd/-

(Jaidev B.Dhadhal)

UIC No.GJ00355

7th (Ad-hoc) Addl. District Judge &
M.A.C.Tribunal, Kachch @ Bhuj.