



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1173 OF 2020
WITH
WRIT PETITION NO. 1174 OF 2020
WITH
WRIT PETITION NO. 739 OF 2020
WITH
WRIT PETITION NO. 1175 OF 2022

Shri. G. Chandrashekharan Shivam
And Ors.

...Petitioners

V/s.

Mr. Rajkumar Agarwal & Ors.

...Respondents

Mr. Rushabh S. Vidyarthi a/w. Ms. Ishita Bhole i/by. Mr. Saumen S.
Vidyarthi, for the Petitioners.

Ms. Jyoti Bajpayee, for Respondent No.2.

CORAM : SANDEEP V. MARNE, J.

DATED : 7 September 2023.

P.C. :

1. These petitions are filed challenging order dated
29 November 2019 passed by the Member, Motor Accidents Claim

Tribunal, Mumbai by which application filed by the Respondent-Insurance Company for impleadment of owner and insurer of Motor Car MH-01-AC-4129 as opposite party has been allowed.

2. It is Petitioners' case that the deceased and injured were travelling in Motor Car No. MH-01-AC 4129 and compensation is claimed against the owner and insurer of the Truck bearing registration No. OR-15-G-6449. That they do not wish to implead owner and insurer of the Motor Car No.-MH-01-AC-4129 to the proceedings. On the contrary, it was the plea of the Respondent-Insurance Company that the driver of the Motor Car was responsible for the accident and therefore the owner and insurer of the Motor Car are necessary parties to the proceedings. The Tribunal has proceeded to allow the application filed by the Respondent-Insurance Company directing the Petitioners to join the owner and insurer of the Motor Car No.MH-01-AC-4129 as opposite party. These petitions are filed challenging the order dated 29 November 2019 passed by the Tribunal.

3. Mr. Vidyarthi, the learned counsel appearing for Petitioners would submit that the claimants being the *dominus-litis* of their case cannot be forced to seek relief against undesired party. He would submit that the claimants believe that the driver of the motor vehicle was responsible for causing the accident and that the owner and insurance company of Truck alone are liable to pay

compensation to the deceased and injured. Placing reliance on the judgment of the Apex Court in the case of ***Khenyei V. New India Assurance Company Ltd***, 2015 ACJ 1441 SC, Mr. Vidyarthi would contend that it is the choice of the claimant to sue only one of the joint-tortfeasors and to recover the entire compensation from one of the joint-tortfeasors. He would therefore submit that the claimants cannot be forced to join owner or insurer of the Motor Car. He would also draw my attention to the order dated 9 November 2022 passed by the Tribunal in Application No. 2319/2012 in respect of the claim filed by Mrs. Uma Rani Naidu involved in the same accident, where the insurer of Motor Car was also impleaded as opposite party No.2, but the Tribunal held the Respondent-Insurance Company (New India Assurance Company Ltd.) alone liable to pay compensation. He would therefore submit that impleadment of owner or insurer of Motor Car would be an exercise in futility.

4. *Per-contra*, Ms. Bajpayee, the learned counsel appearing for Respondent No.2-Insurance Company would oppose the petitions and support the order passed by the Tribunal. She would submit that the Respondent-Insurance Company wants to prove before the Tribunal that the driver of the motor car was actually responsible for cause of accident and that therefore the Respondent-Insurance Company cannot alone be directed to bear compensation, if payable in respect of the accident. She would submit that in claim

filed by Mrs. Uma Rani Naidu arising out of same accident, she had joined Cholamandalam MS General Insurance Company Ltd., being insurer of the Motor Car as party and therefore there is no error in the order passed by the Tribunal directing impleadment of owner and insurer of the Motor Car to the claim.

5. After having heard the learned counsels appearing for the parties, the short issue that arises for consideration is whether the claimants can be forced to seek compensation from both the joint-tortfeasors or whether he can choose to sue just one of them.

6. The issue is no more *res-integra* and is decided by the Apex Court in *Kheniye's* (supra). The issue before the Apex Court was whether it is open for the claimant to recover entire compensation from one of the joint-tortfeasors, particularly in an accident caused by composite negligence of two vehicles. The Apex Court held in paras-17 and 22 as under :

17. The question also arises as to the remedies available to one of the joint tortfeasors from whom compensation has been recovered. When the other joint tortfeasor 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 tortfeasor. Thus, it would be open to the impleaded joint tortfeasors after making payment of compensation, so as to sue the other joint tortfeasor and to recover from him the contribution to the extent of his negligence. However, in case when both the tortfeasors are before the court/Tribunal, if

evidence is sufficient, it may determine the extent of their negligence so that one joint tortfeasor can recover the amount so determined from the other joint tortfeasor in the execution proceedings, whereas the claimant has right to recover the compensation from both or any one of them.

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

22.1. 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-a-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 tortfeasors 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 tortfeasor can recover the amount from the other in the execution proceedings.

22.4. 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 tortfeasors. In such a case, impleaded joint tortfeasor should be left, in case he so desires, to sue the other joint tortfeasor in independent proceedings after passing of the decrees or award.

7. Thus the law is well settled that in case of composite negligence, it is open for the Claimant to sue one of the joint-tortfeasors. It is for this reason that the claimant decided not to sue the other joint-tortfeasor. In the present case, Petitioners do not wish to claim any compensation from the owner and insurer of motor car. It appears that the motor car is owned by one of the claimants. This is the plausible reason why the claimants do not want to implead the owner or insurer of motor-car. Be that as it may be, since the law permits a claimant to sue one of the two joint-tortfeasors, such a claimant cannot be forced by the Tribunal to seek relief against the other joint-tortfeasors also.

8. It also appears that in the claim of Mrs. Uma Rani Naidu involving same accident, though owner and insurer of motor-car were also impleaded as parties, the Tribunal has directed only the Respondent-Insurance Company to bear the entire share of compensation. Whether in the present case also only the Respondent-Insurance Company would be held liable to pay compensation or not, is something which would be decided by the Tribunal. As of now, the claimant cannot be forced to implead the owner or insurer of the motor car.



Neeta Sawant

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101-WP-1173-2020(GROUP)

7 September 2023.

9. The petitions thus succeed. The orders dated 29 November 2019 passed by the Tribunal are set aside. The Writ Petitions are allowed and disposed of. No costs.

SANDEEP V. MARNE, J.



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 2162 OF 2022
IN
WRIT PETITION NO. 1173 OF 2020
ALONGWITH
INTERIM APPLICATION NO. 2160 OF 2022
IN
WRIT PETITION NO. 739 OF 2020
ALONGWITH
INTERIM APPLICATION NO. 1401 OF 2022
IN
WRIT PETITION NO. 1174 OF 2020

Shri. G. Chandrashekharan Shivam

(since deceased) through legal heirs

....Applicants

IN THE MATTER BETWEEN :

1. Shri. G. Chandrashekharan Shivan

father of the deceased & anr.

...Petitioners

V/s.

Mr. Rajkumar Agarwal & Ors.

...Respondents

Mr. Rushabh S. Vidyarthi a/w. Ms. Ishita Bhole i/by. Mr. Saumen S.

Vidyarthi, for the Petitioners.

Ms. Jyoti Bajpayee, for Respondent No.2.



Neeta Sawant

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101-WP-1173-2020(GROUP)
7 September 2023.

CORAM : SANDEEP V. MARNE, J.

DATED : 7 September 2023.

P.C. :

1. The above Interim Applications are filed to bring the legal heirs of deceased Petitioner No.1, who expired on 12 May 2021, on record.

2. For the reasons stated in the applications, the same are allowed. The learned counsel for the Petitioners is permitted to bring the legal heirs of deceased Petitioner No.1 on record. Amendment to be carried out forthwith. Interim Applications stand disposed of accordingly.

SANDEEP V. MARNE, J.