A KAMLESH & ORS.

v.

ATTAR SINGH & ORS.

(Civil Appeal No. 8879 of 2015)

B OCTOBER 27, 2015

**[H.L. DATTU, CJI AND ARUN MISHRA, J.]**

*Motor Vehicles Act, 1988 – Fatal accident – Death* C *occurred on account of collusion between a tempo (on which the deceased was travelling) and a car – Claim petition by the dependants of deceased against the driver, owner and insurer of the car and the driver of the tempo – Tribunal awarded compensation of Rs.5,81,000/-, fastening the liability* D *to pay the same on the driver of the tempo, attributing him negligence – High Court, in appeal by the driver of tempo, set aside the award holding that the claimants had not set up case of negligence against him – On appeal, held: Method and manner of the accident and version of two witnesses show* E *that it was a case of composite negligence – Both the drivers were joint tort-feasors and thus liable to make payment of compensation – Compensation awarded by the Tribunal is confirmed – It is open to claimants to recover the entire* F *amount from any of the respondents – It is open to the respondents to settle their* inter se *liability or* per **Khenyei** *case.*

**Allowing the appeal, the Court**

G **HELD:1. The method and manner in which the accident has taken place leaves no room for doubt that it was a case of composite negligence of drivers of both the vehicles. Though Police has registered a case against driver of the tempo, but the same cannot be said** H

**to be conclusive. It appears that both the drivers have tried to save their liability. In such circumstances, the version of eye-witnesses, PW.2 and PW.3 assumes significance. No effort has been made by the High Court to appreciate the evidence and method and manner in which the accident has taken place. Both the witnesses have stated that the car was in excessive speed. However, it appears that the driver of tempo also could not remove his vehicle from the way of the car. Thus, both the drivers were clearly negligent. It was a case of composite negligence. Both the drivers were joint 'tort-feasors', thus, liable to make payment of compensation. [Para 8] [1026-C-H; 1027-A-B]**

*Khenyei v. New India Assurance Co. Ltd. & Ors.* **AIR 2015 SC 2261: 2015 (5) SCR 158 – relied on.**

**2. The amount determined/awarded by the Claims Tribunal i.e. Rs.5,81,000/- along with 6 per cent interest is upheld as no appeal for its enhancement was filed by the claimants. It would be open to the claimants to recover the entire amount from any of the respondents, that is from owner, driver and insurer of the the car or respondent No.4, driver of the tempo, as their liability is joint and several with respect to claimants. It would be open to the respondents to settle their *inter se* liability as per *khenyei* case. [Para 10] [1028-C-D]**

Case Law Reference

| | | |
|---|---|---|
| 2015 (5) SCR 158 | relied on | Para 9 |

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 8879 of 2015.

From the Judgment and Order dated 04.09.2009 of the

A High Court of Punjab & Haryana at Chandigarh in F.A.O. No. 345 of 2007.

Daya Krishan Sharma, Adv., for the Appellatns.

B Manish Pratap Singh, (for Dr. Nafis A. Siddiqui)., Adv., for the Respondent.

The Judgment of the Court was delivered by

**ARUN MISHRA, J.** 1. Leave granted.

C

2. The appeal has been preferred by the claimants aggrieved by the dismissal of their claim petition and setting aside award passed by the Motor Accidents Claims Tribunal, Sonepat on 5.8.2005 in Claim Petition No.217/2002/2004 by D the High Court of Punjab & Haryana at Chandigarh vide judgment and order dated 4.9.2009 in FAO No.345/2007.

3. The claimants Kamlesh, widow of deceased Rishi Parkash, three minor sons and mother of the deceased filed a E claim petition as against the driver, owner and insurer of Maruti Car No.DL4CC -5172 and driver of three-wheeler Tempo No.HRH-3572. The compensation of Rs.12 lakhs was prayed on account of the death of Rishi Parkash in the accident dated 8.5.2003 caused due to the collision between Maruti car and F tempo. Maruti car was driven by Rajinder Singh whereas the tempo was driven by Attar Singh, respondent No.4. Deceased Rishi Parkash was travelling in the tempo towards village Naina Tatarpur. As per the claimant Attar Singh was driving the tempo on his right side at a normal speed in due observance of the G traffic rules. When he reached about 1.5 km. from Barwashni towards Gohana, Maruti car came from the opposite side and struck the tempo inbetween near footstep as a result of which Rishi Parkash received injuries and succumbed to them on H the way to the hospital. Postmortem was conducted. Respondent No.1 Rajinder filed an FIR No.77 under section

279-304-A IPC against Attar Singh. Deceased was aged 36 years and was working as a Supervisor in Emkay & Co. He was receiving a salary of Rs.4,500 per month. Maruti car was owned by Hukam Chand and insured with Oriental Insurance Co. Ltd.

4. The owner and driver of the Maruti car contended that the accident was the outcome of rash and negligent driving of Attar Singh, driver of the tempo. Police had found on due investigation that Attar Singh was negligent. Chargesheet was also filed against Attar Singh. The insurer in its separate written statement also contended that the accident was due to rash and negligent driving of Attar Singh, respondent No.4.

5. Attar Singh, respondent No.4, in his reply contended that Police had fabricated the case against him in collusion with Rajinder Singh, driver of the Maruti car. A criminal complaint has been filed by respondent No.4 against Rajinder Singh, driver of Maruti Car before the Additional Chief Judicial Magistrate, Sonepat for rash and negligent driving.

6. Claims Tribunal came to the conclusion that Ram Parshad, Claimant Witness PW-2 has admitted that after investigation Police has found Attar Singh to be negligent and he was chargesheeted. Attar Singh examined himself and his statement has not been relied upon mainly on the ground that as he has admitted that he was facing criminal trial. The Claims Tribunal found that Attar Singh driver of the tempo, was negligent, determined the quantum of compensation at Rs.5,81,000/- with interest at the rate of 6% per annum from the date of filing application, liability to pay the same has been fastened upon Attar Singh.

7. Aggrieved thereby Attar Singh preferred appeal before the High Court. The High Court on the ground that in the claim petition the negligence of Attar Singh has not been pleaded

A and the claimants have relied upon the evidence of Ram Parshad PW2 and Devender PW3 to prove the negligence of the driver of the Maruti car; whereas Rajinder driver of the Maruti car had lodged the first information report. As the claimants have not set up the case of negligence against Attar Singh. As B such the High Court has allowed the appeal filed by Attar Singh driver of the tempo and has dismissed the claim petition. Aggrieved thereby the appeal has been preferred by the claimants.

C 8. We have heard learned counsel for the parties and perused, *inter alia*, the evidence on record of Ram Parshad PW2 and Devender PW.3. The method and manner in which the accident has taken place leaves no room for doubt that it D was a case of composite negligence of drivers of both the vehicles, that is the driver of Maruti car and driver of tempo. Though Police has registered a case against driver of the tempo Attar Singh and has filed a chargesheet but the same cannot be said to be conclusive. Though, Attar Singh has E stated that it was in order to oblige the driver of the Maruti car, a case was registered against him. Be that as it may. It appears both the drivers have tried to save their liability. In such circumstances, the version of eye-witnesses, PW.2 and PW.3 assumes significance. The fact remains that car had dashed F the tempo on the middle portion near footstep. Thus the method and manner in which the accident has taken place leaves no room for doubt that both the drivers were negligent. Man may lie but the circumstances do not is the cardinal principle of evaluation of evidence. No effort has been made by the High G Court to appreciate the evidence and method and manner in which the accident has taken place. Both the aforesaid witnesses have stated Maruti Car was in excessive speed. However, it appears driver of tempo also could not remove his vehicle from the way of Maruti Car. Thus, both the drivers were H clearly negligent. It appears from the facts and circumstances

that both the drivers were equally responsible for the accident. Thus, it was a case of composite negligence. Both the drivers were joint 'tort-feasors', thus, liable to make payment of compensation.

9. The law in the case of an accident arising out of composite negligence has been considered by a 3 Judges' bench of this Court in *Khenyei v. New India Assurance Co. Ltd. & Ors.* (AIR 2015 SC 2261) wherein following propositions have been laid down :

> "(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

A 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."

B

10. In view of the aforesaid, the amount determined/ awarded by the Claims Tribunal was Rs.5,81,000/- along with 6 per cent interest from the date of filing of the petition till the C date of realization of the amount is upheld as no appeal for its enhancement was filed before the High Court by the claimants. It would be open to the claimants to recover the entire amount from any of the respondents, that is from owner, driver and insurer of the Maruti car or respondent No.4, driver of the tempo D as their liability is joint and several with respect to claimants. It would be open to the respondents to settle their *inter se* liability as per the aforesaid decision of this Court. Appeal is allowed. No order as to costs.

E Kalpana K. Tripathy Appeal allowed.