

(2019) 06 GUJ CK 0014
In the Gujarat High Court

Case No : R/Special Civil Application No. 3492, 3509 Of 2018

Bajaj Allianz General Insurance Co. Ltd. Petitioner	APPELLANT
Vs	
Nareshkumar Rai Kapildev Rai & Others	RESPONDENT

Date of Decision : 14-06-2019

Acts Referred:

Citation : (2019) 06 GUJ CK 0014

Hon'ble Judges : Paresh Upadhyay, J

Bench : Single Bench

Advocate : Vibhuti Nanavati

Final Decision : Allowed

Judgement

Paresh Upadhyay, J

1. Challenge in these two petitions is made to two separate but identical orders passed by the Motor Accident Claims Tribunal (Main), Vadodara, both dated 22.09.2017 (i) below Exh.16 in M.A.C.P. Nos.22 of 2017 and (ii) below Exh.18 in M.A.C.P. No.21 of 2017.
2. Though served, the respondents have chosen not to appear.
3. Heard learned advocate for the petitioner.
4. Mr.Vibhuti Nanavati, learned advocate for the petitioner has taken this Court through the relevant facts, as emerging from the record (which are noted hereinafter) and has submitted that the impugned orders passed by the Tribunal are unsustainable inasmuch as, it is against the very judgment of the Supreme Court, which is referred to by the Tribunal. Learned advocate for the petitioner has extensively taken this Court through the decision of the Supreme Court of India in the case of Khenyei Vs. New India Assurance Co. Ltd. reported in (2015) 9 SCC 27.3 Reliance is also placed on the

decision of this Court in the case of Lalabhai Mavjibhai Parmar Vs. Raval Natvarbhai Melabhai recorded on Special Civil Application No.3730 of

2016. It is submitted that, the Tribunal ought to have allowed the application given by the petitioner â?" Insurance Company of the tanker, to join the

owner and Insurance Company of the motorcycle. It is submitted that, that would not have prejudiced the claimants in any manner and the multiplicity

of the proceedings could have been avoided. It is submitted that the impugned orders be set aside and the applications given by the petitioner before

the Tribunal, on which the impugned orders are passed, be allowed.

5. Having heard learned advocate for the petitioner and having considered the material on record, this Court finds as under.

5.1 An accident took place on 11.09.2016 between a motorcycle bearing registration No.GJ-06-KF-0756 and a tanker bearing Registration No.GJ-6-

Y-6317, near Village- Methi (Jurisdiction of Karjan Police Station).

5.2 The motorcycle was driven by one Kamanbhai Parsothambhai Vasava, with two pillion riders viz. Sagarbhai Rameshbhai Vasava & Vishalbhai

Maheshbhai Vasava.

5.3 The driver of the motorcycle died in that accident. Claim petition, if any, filed by the legal heirs of the said person (Kamanbhai Parsothambhai

Vasava - deceased) is not the subject matter of these two petitions.

5.4 Both the pillion riders, who sustained injuries, filed two separate claim petitions before the M.A.C.T. Vadodara, being M.A.C.P. Nos.21 & 22 of

2017. In the said claim petitions, they joined the driver, owner and the Insurance Company of the tanker only. The present petitioner is the Insurance

Company of the said tanker. It is opponent No.3 in those claim petitions.

5.5 On the notice being served to the present petitioner in the said claim petitions, separate applications were given by it (the present petitioner â?"

Insurance Company of the tanker) that the driver, owner and the insurance company of the motorcycle be also joined as party respondents in the

respective claim petitions.

5.6 The said applications are rejected by the Tribunal. It is these orders which are under challenge in these petitions.

6.1 From the record, it transpires that, while rejecting the above referred applications, the Tribunal took note of the decision of the Supreme Court of

India in the case of Khenvei Vs. New India Assurance Co. Ltd., reported in (2015) 9 SCC 273. According to the Tribunal, in view of the said decision

of the Supreme Court, the applications could not be entertained. The Tribunal recorded that the claimant is the master of his lis, he is dominus listus, so

against his wish no one can be joined as defendant. On conjoint consideration of the contents of the application of the petitioner Insurance Company,

the reasons recorded by the Tribunal and the ratio of the decision of the Supreme Court of India in the case of Khenvei (supra), this Court finds that

the Tribunal fell in error, while rejecting the applications filed by the petitioner
 â" Insurance Company. The decision of the Supreme Court of India in

the case of Khenvei (Supra) nowhere dictates what is read by the Tribunal in the impugned orders. On the contrary, it reads otherwise.

6.2 True it is, that the claimant can sue both or any one of joint tortfeasors and therefore it is for the claimant(s) to decide, which owner, driver and

insurance company would be joined as opponents in the claim petitions, however equally true it is, that when the opponent Insurance Company comes

with an application that, it does have the details of the driver, owner and the insurance company of the other vehicle also, which was involved in the

accident in question, those parties can not be said to be aliens to the proceeding. The rejection of the request of one Insurance company to join them

as party respondents would ultimately lead to multiplicity of proceedings.

6.3 The decision of the Supreme Court of India in the case of Khenvei (Supra) nowhere dictates what is read by the Tribunal in the impugned orders.

On the contrary, it reads otherwise. At this stage, reference needs to be made to the ratio which can be deduced from the said judgment. Para:18

thereof reads as under.

18. !....

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 feasons and to recover the entire

compensation as liability of joint tort feasers 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 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 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 tortfeasor 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 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 decree or award.â??

6.4 The above suggests that, had such an application been not made by the petitioner Insurance Company, the claim petitions filed by the claimants could not be termed to be suffering from the vice of non â?" joinder of necessary parties but if such an application is made, then also it would not prejudice the claimants in any manner, and in any case, such an application can not be said to be not maintainable or unwarranted. With the driver, owner and the Insurance Company of both the vehicles involved in the accident in question, further litigation can be avoided and effective adjudication can take place, without any prejudice to the claimants.

6.5 For the above reasons, this Court arrives at the judgment that, rejection of the applications given by the petitioner Insurance Company, by the Tribunal is illegal. Those applications were required to be allowed.

7. There is one more reason to allow these petitions. Similar issue had cropped up before this Court in the case of Lalabhai Mavjibhai Parmar versus Raval Natvarbhai Melabhai (Special Civil Application No. 3730 of 2016). After considering various decisions of this Court and the Supreme Court of India in the case of Khenyei (supra), this Court held as under.

â??9. It cannot be ignored that non-joinder of such party may result into a situation where an action by present tortfeasor against joint tortfeasor to bifurcate and to split the liability would result into multiplicity of litigation and

may raise an issue of res-judicata and / or estoppel. After an order in such petition one of the tort feors may made to pay compensation holding him negligent, which would result into 100% negligence on his part and hence 100% compensation is to be paid by the said tort feor. It can not ignored that now claim petition can be preferred at anywhere at anytime. Thereby now when there is no restriction either on territorial jurisdiction or limitation for filing such claim petition and thereby though we may not permit the claimant, there is possibility that some claim petition may be preferred before some other Tribunal only against remaining tort feor and thereby there will be not only multiplicity of litigation but unethical claim by such claimants. It is settled legal position that all the issues arising out of same incident shall be completed in same proceedings. Therefore also, presence of all concerned parties is necessary more particularly, when it is brought to the notice to the Tribunal and so requested by one of the litigant.â??

â??11. However, only clarity required is to the effect that though the impugned order is directing the claimants to join driver, owner and insurance company of the other vehicles involved in the accident, it can be done either by the Tribunal on its own, or even by the present respondent. For the purpose, they can call for information of such litigant from the police papers and more particularly calling upon prescribed information in Form 54 under the Act and Rules and, therefore, neither Tribunal nor respondent has to await for any act or action on the part of the petitioner claimants.â??(emphasis by this Court)

8. This Court finds that, the above referred decision of this Court in the case of Lalabhai Mavjibhai Parmar (supra), which is after considering the decision of the Supreme Court of India in the case of Khenyei (supra) lays down the correct principle of law. The same would be applicable with full force, in the present case as well.

9. For the reasons recorded above, following order is passed.

9.1 These petitions are allowed.

9.2 The impugned orders passed by the Motor Accident Claims Tribunal (Main), Vadodara dated 22.09.2017 (i) below Exh.16 in M.A.C.P. Nos.22 of 2017 and (ii) below Exh.18 in M.A.C.P. No.21 of 2017 are quashed and set aside. Both the said applications are allowed.

9.3 The cause title of the respective claim petitions (pending with the concerned Tribunal) shall be amended in terms of para:8(B) of these petitions.

9.4 The stay granted by this Court vide order dated 05.04.2018 is vacated.