

**(2013) 05 GUJ CK 0044**  
**In the Gujarat High Court**

**Case No :** First Appeal No"s. 5431 to 5434 of 2008

|                                        |            |
|----------------------------------------|------------|
| Mayaben Ramanlal Jaiswal and Another   | APPELLANT  |
| Vs                                     |            |
| Rajubhai Chimanlal Jaiswal and Another | RESPONDENT |

**Date of Decision :** 09-05-2013

**Acts Referred:**

**Citation :** (2014) ACJ 859 : (2013) 3 GLR 1993

**Hon'ble Judges :** S.H. Vora, J

**Bench :** Single Bench

**Advocate :** R.K. Mansuri, for the Appellant; Nagesh C. Sood for Defendant No. 2, for the Respondent

## Judgement

S.H. Vora, J.—Six Motor Accident Claim Petition Nos. 1085 to 1090 of 2004 were filed before the Motor Accident Claim Tribunal (Aux.), Sabarkantha at Himmatnagar, which arose out of an accident, which occurred on 3-4-2004 on account of collision between Tata Sumo bearing registration No. GJ-18 AA-5027 and other vehicle No. 407 resulting into personal injuries to four persons and three persons succumbed to the injuries. All the seven persons, who sustained injuries and met with the death, were travelling in the Tata Sumo at relevant time. The said accident took place when all these seven persons were going to Chanod from Ahmedabad in the said Tata Sumo car. The said Tata Sumo Jeep Car was driven by the father of the applicants of M.A.C.P. No. 1085 of 2004, namely, Mugatlal @ Mukeshlal Jaiswal. According to the case of the claimants, at that time, Tata Sumo Car was going on Ahmedabad-Nadiad on four lane Highway from the outskirt of village Dhamatvan, where driver Mugatlal @ Mukeshlal Jaiswal drove the said car in full speed negligently and collided the same with a divider of the road and as the vehicle was in full speed, it turned turtle and serious accident took place, wherein three persons lost their lives and four other sustained serious injuries. While dealing with issue No. 1, the Tribunal found that the accident occurred due to carelessness and negligent driving of the vehicle involved i.e. Tata Sumo Jeep Car and other vehicle. Upon analysis and

appreciation of evidence, the Tribunal came to the conclusion that the accident has occurred due to negligency of drivers of both the vehicles, namely Tata Sumo Jeep Car and further due to negligency of the driver of the other vehicle bearing No. 407 which escaped from the place of accident. So, the Tribunal held 80% liability of the driver of Tata Sumo and 20% of the driver of one other unknown vehicle bearing No. 407 and thus, the Tribunal answered the said issue No. 1 accordingly.

2. Being aggrieved by and dissatisfied with the judgment and award dated 29-3-2007 passed by the Motor Accident Claim Tribunal (Aux.), Sabarkantha at Himmatnagar, the appellants preferred these appeals for enhancement of the claim under Sec. 173 of the Motor Vehicles Act.

3. Mr. Mansuri, learned Advocate appearing on behalf of the appellants took a serious objection for the deduction of amount of 20% being negligency attributed to the driver of unknown vehicle No. 407. According to the submission of learned Advocate appearing on behalf of the appellants that all the persons who were traveling in the Tata Sumo Car suffered injuries without any negligency on their part, but as a result of combined negligency of two drivers of the collided vehicles. In his submissions, it is not a case of contributed negligency, but a case of composite negligency. In support of his submission, he has placed reliance on the decision rendered in case of Kusumben Vipinchandra Shah and Another Vs. Arvindbhai Narmadashankar Raval and Others, and also in case of T.O. Anthony Vs. Karvarnan and Others,

4. Per contra, Mr. Nagesh Sood, learned Advocate appearing on behalf of the respondents submitted that the Tribunal has rightly made apportion of negligency amongst two drivers of the offending vehicles, and therefore, there is no merit in these appeals preferred by the claimants, and therefore, urged to dismiss the same.

5. At the outset, it requires to be noted that the insurer of the offending Tata Sumo Car has not filed any appeal or cross appeal against the impugned award. Meaning thereby, the findings recorded by the Tribunal as far as negligency of the driver of both the vehicles are concerned, it reaches finality. The only question, which requires to be decided is whether it is a case of contributory negligent driving on the part of both the drivers or it is a case of composite negligency. The answer to the said question is straightway available in the decision cited by the learned Advocate appearing on behalf of the appellants. Suffice to refer Paras 5 and 6 in case of T.O. Anthony Vs. Karvarnan and Others, which reads as under:

5. The Tribunal assumed that the extent of negligence of the appellant and the first respondent is fifty:fifty because it was a case of composite negligence. The Tribunal, we find, fell into a common error committed by several Tribunals, in proceeding on the assumption that composite negligence and contributory negligence are the same. In an accident involving two or more vehicles, where a

third party (other than the drivers and/or owners of the vehicles involved) claims damages for loss or injuries, it is said that compensation is payable in respect of the composite negligence of the drivers of those vehicles. But in respect of such an accident, if the claim is by one of the drivers himself for personal injuries, or by the legal heirs of one of the drivers for loss on account of his death, or by the owner of one of the vehicles in respect of damages to his vehicle, then the issue that arises is not about the composite negligence of all the drivers, but about the contributory negligence of the driver concerned.

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.

6. Similarly, it is also fruitful to refer the Para 6 of the decision rendered in case of Kusumben Vipinchandra Shah and Another Vs. Arvindbhai Narmadashankar Raval and Others, which reads as under:

6. After examining all the previous decisions of this Court and also the leading books on the subject, including Pollock, the Division Bench held that where a person is injured without his own negligence but on account of the negligence of the two drivers of the colliding vehicles, it is a case of composite negligence and 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 rule as to remoteness of damage, he is entitled to sue all or any of the negligent persons and it is no concern of his whether there is any duty or contribution or indemnity as between those persons though in any case he cannot recover in the whole more than his whole damages. He has a right to recover the full amount of damage from any of the joint tortfeasors. Those who are sued cannot insist on having the others being joined as defendants because the liability of the joint tortfeasors is joint and several. Every wrong-doer is liable for the whole damage and it does not matter whether they acted between themselves as equals. This Court further held that the defendant who is compelled to pay the entire amount of damages decreed has a right to contribution from the other wrongdoer. The liability in the

case of composite negligence, normally should not be apportioned, as both wrong-doers are jointly and severally liable for the whole loss. Rule of apportionment of liability applies in a case of contributory negligence, i.e. where the injured himself is also guilty of negligence.

7. Admittedly, any of the appellants (original claimants) before the Tribunal were not drivers, but they sustained injuries or became victim of the accident, for which, they cannot be blamed or put to any disadvantage position because of combined negligency of two drivers of the collided vehicles. So, under the circumstances, the claimants are entitled to damage jointly and severally from the negligent wrongdoer. In other words, every wrong-doer is liable for the whole damage and it does not matter whether they acted between themselves as equals. A decree passed against two or more tortfeasors can be executed against any one of the defendants and such defendants can be compelled to pay the entire amount of damages decreed. So, the liability in case of composite negligency cannot be apportioned, because the claimant is able to recover whole amount of compensation from the owner or driver of either vehicle, because both wrong-doers are jointly and severally liable for the whole loss. It is settled in the decision cited at Bar that the rule of apportionment of law applies in case of contributory negligency i.e. whether the victim himself is also guilty of the negligency. From the decisions cited at bar, it is clear that in order to have a complete redress for the injuries suffered by the claimants, it is not necessary for them to sue all the joint tortfeasors but the claimants can sue the joint tortfeasors either jointly or severally. Under the circumstances, the respondents are liable to satisfy the entire award and the award to the extent of deducting 20% from the awarded amount requires to be quashed and set aside.

8. In First Appeal No. 5431 of 2008, learned Advocate appearing on behalf of the appellants have submitted that the learned Tribunal has erred in not considering the agricultural income of the deceased at Rs. 3,000/- per month. While assessing monthly income of Rs. 1,500/- of deceased Shobhanaben, the Tribunal found that there is no sufficient and cogent evidence in support of the income of Rs. 3,000/- from agricultural work. As such, this controversy can be concluded without any further discussion, because even if we believed that deceased Shobhanaben was housewife, it is now settled in catena of decisions that the monthly income of such housewife ought to have been fixed at Rs. 3,000/-, and therefore, the compensation assessed by the Tribunal taking monthly income of Rs. 1,500/- requires to be modified to the extent of Rs. 3,000/-.

9. Accordingly, the claimants of First Appeal No. 5431 of 2008 now would be entitled to total compensation of Rs. 3,35,000/- instead of Rs. 2,57,000/- as awarded by the Tribunal. Similarly, so far as First Appeal Nos. 5432 to 5434 of 2008 are concerned, the claimants would be entitled to Rs. 2,05,400/-, Rs. 30,000/- and Rs. 30,000/- respectively instead of Rs. 1,64,370/-, Rs. 24,000/- and Rs. 24,000/- respectively.

10. The offshoot of the above discussion is such that the appeals preferred by

the original claimants are hereby allowed in part. The respondents are directed to pay the respective claimants as under:

(1) Claimants of First Appeal No. 5431 of 2008 is entitled to get Rs. 3,35,000/-.

(2) Claimants of First Appeal No. 5432 of 2008 is entitled to get Rs. 2,05,400/-.

(3) Claimant of First Appeal No. 5433 of 2008 is entitled to get Rs. 30,000/-.

(4) Claimant of First Appeal No. 5434 of 2008 is entitled to get Rs. 30,000/-.

11. The respondents to pay the aforesaid amount with interest at the rate of 7.5% per annum from the date of application till the date of its actual payment. The respondents are further directed to pay the enhanced awarded amount within three months from today. The Tribunal to disburse and deposit the amount as per its award after deducting deficit Court fee, if any. Under the facts and circumstances, there shall be no order as to costs.