
(2014) 03 GUJ CK 0128
In the Gujarat High Court
Case No : First Appeal No. 3434 of 2013

Oriental Insurance Co. Ltd.

APPELLANT

Vs

Raval Rupsibhai Pasabhai (Decd.) and Others

RESPONDENT

Date of Decision : 04-03-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 162, 166, 168, 173, 174

Citation : (2016) 1 ACC 379 : (2015) ACJ 2698 : (2015) 1 GLR 216

Hon'ble Judges : Harsha Devani, J

Bench : Single Bench

Advocate : Anal S. Shah, Advocates for the Appellant

Judgement

Harsha Devani, J.—Heard Mr. Anal Shah, learned Advocate for the appellant and Mr. Ashok Parmar, learned Advocate for the respondent No. 4. Having regard to the submissions advanced by the learned Advocates for the respective parties, the Court is of the view that the matter requires consideration, hence, admit. By this appeal under Sec. 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act"), the appellant-Insurance Company has called in question the judgment and award dated 21st February, 2009 passed by the Motor Accident Claims Tribunal (Main), Banaskantha (hereinafter referred to as "the Tribunal") in Motor Accident Claim Petition No. 255 of 1996 whereby the appellant, together with the respondent Nos. 4 to 6, has been held jointly and severally liable to pay compensation to the claimants.

2. The facts stated briefly are that on 3rd February, 1996 at 9-30 in the night, a vehicular accident took place on the Kandla-Bhildi National Highway between a Truck bearing No. PBO-4-2372 and Jeep No. GJ-1-K-9370. On account of the said vehicular accident, four persons died including one Raval Laduben Pasabhai. The heirs of deceased Laduben filed a claim petition being Motor Accident Claim Petition No. 255 of 1996 before me Claims Tribunal for compensation of Rs. 5,00,000/-. The Tribunal, after appreciating the evidence on record, held that the accident had occurred on account of negligence on the part of me drivers of both

the motor vehicles and held the driver of the truck liable to the extent of 65% and the driver of the jeep to the extent of 35%. Partly allowing the claim petition, the Tribunal held that the appellant and the respondent Nos. 4 to 6 were jointly and severally liable to pay compensation of Rs. 2,25,500/- with interest at the rate of 9% per annum to the claimants. The appellant is aggrieved by the fact that the Tribunal after finding that the truck driver was liable to the extent of 65% and the jeep driver was liable to the extent of 35% did not apportion the amount of compensation payable by the owners and drivers of the respective vehicles.

3. Mr. Anal Shah, learned Advocate for the appellant, at the outset, submitted that the present appeal is limited to the extent the Tribunal has held the appellant jointly and severally liable for payment of compensation of Rs. 2,25,500/-. It was submitted that the Tribunal has failed to appreciate that the Claim Petition was filed under Sec. 166 of the Motor Vehicles Act, and therefore, once the Tribunal came to the conclusion that there was composite negligence on the part of the drivers of the vehicle, it was incumbent upon the Tribunal to apportion the amount of compensation payable by the parties. Referring to the impugned award, it was pointed out that the Tribunal has come to the conclusion that the driver of the truck was negligent to the extent of 65% and that the driver of the jeep was negligent to the extent of 35%. Despite the aforesaid position, the Claims Tribunal did not fasten the liability on the parties in proportion to the negligence attributed to each of them. It was submitted that though both the tortfeasors have been held to be liable, the amount has been recovered from the appellant alone and the appellant has no remedy of recovering the amount to the extent of liability of the driver of the jeep in view of the provisions of Sec. 175 of the Act which bars the jurisdiction of the Civil Court. It was submitted, that the negligence having been apportioned by the Tribunal, the claimants should be directed to recover 35% of the compensation from the heirs of the driver-cum-owner of the jeep but the appellant should not be made liable to pay the entire amount of compensation. Reference was made to the provisions of Sec. 168 of the Act to submit that the Tribunal after making an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid, is required to specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all of them. It was submitted, that therefore, once the Tribunal apportions the negligence between the tortfeasors, it is incumbent upon the Tribunal to specify the amount which shall be paid by the parties concerned. In support of such submission, the learned Advocate placed strong reliance upon the decision of the Delhi High Court in the case of Smt. Angoori Devi and Others Vs. Shri Megh Raj and Others, wherein the Court in the context of Sec. 168 of the Act has held that where the Tribunal finds that there are two vehicles 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 driver of one vehicle

and that of the other. If both vehicles are insured, then it would have to specify the amount payable by each, be that called apportionment or whatever. It could as well be that one vehicle was insured and the other not insured, it would still have to undertake the exercise of specifying the amount payable by the insurer of one vehicle and the owner of the other, as the case may be.

3.1. It was pointed out that the Court in the above decision has held that by specifying the inter se liability of the owners and drivers of the vehicles found negligent in causing the accident does not affect the claimant, be it a case of composite negligence, because the claimant is entitled to recover in law the entire compensation in amount from all or any one of the tort-feasors jointly and severally. That there is no problem where both sets of tort-feasors satisfy the award but where one of them fails, the claimant would be within his/her rights to recover the whole amount from the other. It would then be for that party to claim rateable distribution from the defaulting one. Reliance was placed upon the decision of the Bombay High Court in the case of the Oriental Fire and General Insurance Co. Ltd. Vs. Balkrishna Ramchandra Nayan and others, , for the proposition that the Tribunal is required in making the award to specify the amount to be paid thereunder by the insurer, the owner and the driver of the vehicle involved. The decision of the Kerala High Court in National Insurance Company Ltd. Vs. Yohannan and Others, , was cited for a similar proposition of law.

3.2. Reference was made to Sec. 175 of the Act which bears the heading "Bar on jurisdiction of Civil Courts" to submit that in view of Sec. 175 of the Act, no Civil Court would have the jurisdiction to entertain any question relating to any claim for compensation which may be adjudicated by the Claims Tribunal for that area. It was submitted that, therefore, if the Tribunal does not apportion the liability between the tort-feasors, it would be, next to impossible for the concerned tort-feasor to recover from the other tort-feasor, the amount of compensation to the extent of his liability. Therefore, the provisions of sub-sec. (1) of Sec. 168 of the Act have been enacted so as to avoid multiplicity of litigation. In support of such submission, reliance was placed upon the decision of a Division Bench of this Court in the case of Hirabhai Nanubhai Desai Vs. The State of Gujarat and Others, , wherein the Court has observed that the bar of jurisdiction of the Civil Court has been created only and simply because the Act of 1988 has created a special forum viz., the Motor Accident Claims Tribunal, vesting it with an exclusive jurisdiction to deal with the cases of motor accident claims arising out of vehicular accidents. Obviously, no such claim proceedings for which the Special Motor Accident Claims Tribunals are constituted can lie before the Civil Court. Reference was made to the decision of a Division Bench of this Court in the case of Amarsi Jugabhai v. Vijayaben Hemantlal Dhulia, 1996 (1) GLH 1007 : [1996 (3) GLR 493] , wherein the Court referred to the earlier decision of this Court in the case of Gujarat State Road Transport Corporation Vs. Union of India and Others, , wherein it has been held that it would be always better to sue all joint tort-feasors in one proceeding. It would not only enable the

Tribunal to apportion the 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 the negligence established on the record of the case. The attention of the Court was invited to the decision of a Division Bench of this Court in the case of Kusumben Vipinchandra Shah and Another Vs. Arvinbhai Narmadashankar Raval and Others, wherein the Court has referred to its earlier decision in the case of Amarsi Jugabhai v. Vijayaben Hemantlal Dhulia (supra), wherein it has been held that the defendant who is compelled to pay the entire amount of damages decreed has a right to contribution from the other wrong-doer. 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. The Court, however, clarified that it would be open to the respondents therein to institute appropriate proceedings against the other tort-feasors in accordance with the principles laid down by this Court in Amarsi Jugabhai (supra). It was submitted that in the light of the provisions of Sec. 175 of the Act, it would not be open for the tort-feasor to institute any other proceeding as the same bars the jurisdiction of the Civil Court.

3.3. Reference was also made to the decision of the Supreme Court in the case of New India Assurance Co. Ltd. v. Ramila, rendered in Civil Appeal Nos. 4743-4744 of 2001 on 13-2-2008, wherein the Supreme Court had given liberty to the appellants therein to recover the excess amount paid by the Insurance Company by executing the award against the owner to the extent of such excess amount as per Sec. 174 of the Motor Vehicles Act. It was submitted that thus, if any amount is recovered in excess of the liability of the Insurance Company, by executing the award, it is permissible for the Insurance Company to recover such excess amount under the provisions of Sec. 174 of the Motor Vehicles Act. It was, accordingly, urged that when except for the appellant, none of the other opponents in the Claim Petition had bothered to appear before the Tribunal and the Tribunal after appreciating the evidence on record had arrived at the conclusion that the truck driver is negligent to the extent of 65% and the jeep driver to the extent of 35%, it ought to have apportioned the liability for payment of compensation between the owner, driver and insurer, if any, of both the vehicles. It was, accordingly, urged that the appeal deserves to be allowed.

4. Mr. Ashok Parmar, learned Advocate for the respondent No. 4-Driver adopted the submissions advanced by the learned Advocate for the appellant. Despite service of notice for final disposal, there is no appearance on behalf of the other respondents.

5. In the backdrop of the facts and contentions noted hereinabove, the only question that arises for consideration is as to whether in view of the provisions of Sec. 168 of the Motor Vehicles Act, 1988 there is a statutory mandate upon the

Tribunal to specify the proportion of the award which each tort-feasor is liable to satisfy.

6. Before adverting to the legal contentions, reference may be made to the findings recorded by the Tribunal. The Tribunal in Paragraph 12 of the impugned award has recorded a finding of fact to the effect that two vehicles were involved in the accident and there was a heap of goods. Therefore, keeping in view the nature of the vehicles involved, viz., one is a jeep and the other is a truck, the liability of the truck is to the extent of 65% and that of the jeep is to the extent of 35%. The appellant herein is the insurer of the truck bearing No. PBO-4-2372. Evidently, therefore, the Tribunal has apportioned the liability of the truck driver and the jeep driver. Needless to state that qua the claimants, this is a case of composite negligence, inasmuch as, the deceased was a passenger travelling in the jeep. Insofar as composite negligence is concerned, the Supreme Court in the case of T.O. Anthony Vs. Karvarnan and Others, , has held that "composite negligence" refers to the negligence on the part of two or more persons. Where a person is injured as a result of the negligent act of two or more wrong-doers, it can be said that the person was injured on account of the composite negligence of those wrong-doers. In such 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 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 one person or persons, and partly as a result of his own negligence, then the negligence on 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 by reason of the negligence on his part but the damages recoverable by him in respect of the injuries stand reduced in proportion to his contributory negligence. It is by now well settled that in a case of composite negligence where the tort-feasors are jointly and severally held liable to pay compensation, insofar as the claimants are concerned, they are entitled to recover the compensation from all or any of the tort-feasors. Under the circumstances, to the extent of the right of the claimants to claim compensation, it is not permissible to limit their right to the extent of any apportionment made by the Tribunal. However, the question that arises for consideration is as to whether the Tribunal upon finding the case to be one of composite negligence, is required to specify the amount of compensation payable by the concerned parties namely, owner and driver of one vehicle and the owner and driver of the other vehicle and the concerned Insurance Company/companies if such vehicle/vehicles are insured.

7. In the opinion of this Court, the said question is no longer *res Integra*, inasmuch as, a Division Bench of this Court in the case of Gujarat State Road Transport Corporation Vs. Union of India and Others, has, in the context of Sec. 110B of the Motor Vehicles Act, 1939 which is in *pari materia* with Sec. 168 of

the present Act, held that the question of specification of the amount which is to be paid by the insurer or owner or driver of the motor vehicle involved in the accident as mentioned in Sec. 110B only means that when the tort-feasor is the driver of the motor vehicle either sole or joint, with anyone else, so far as inter se liability of the driver of the offending motor vehicle, owner of the motor vehicle and the insurer is concerned, it is to be specified by the Tribunal so that their respective shares in the contribution of compensation can be clearly demarcated. The Court categorised the cases which can give rise to claims for compensation into four types. The third type of cases categorised by the Court, which is relevant for the present purpose are:

"Claims for compensation in cases of accidents where it is alleged that the accident giving rise to the claim is the result of composite negligence not only of the driver of the motor vehicle but also of outside agency or driver of another vehicle which may or may not be a motor vehicle but who might be found negligent contributing to the causing of the accident, meaning thereby, claims for compensation against joint tort-feasors, one of which at least is the driver of a motor vehicle."

The Court held thus:

"26. So far as third type of cases are concerned, because composite negligence is alleged both against the driver of the motor vehicle as well as driver of any other vehicle, or any other outside agency such Claim Petition would be maintainable before the Tribunal on the principle that outside parties are allowed to be joined as tort-feasors who have contributed to the causing of the accident and, their inter se liability can be adjudicated upon by the Tribunal and the Tribunal can obviously pass proper orders fixing just compensation and making it payable by the joint tort-feasors jointly and severally and also indicating inter se liability of the concerned joint tortfeasors for completing adjudication between the concerned parties so that future litigation inter se joint tort-feasors for contribution can be avoided and in such cases, award can be passed against all joint tort-feasors even though some of them may not be drivers of motor vehicles but still they might have contributed along with driver of the motor vehicles in causing the accident."

Thus, the Court in the above decision has held that the Tribunal can pass orders indicating inter se liability of the concerned joint tort-feasors for completing adjudication between the concerned parties so that future litigation inter se joint tort-feasors for contribution can be avoided.

8. In *Union of India (UOI) Vs. Bhagwati Prasad and Others*, , on which reliance had been placed by the learned Counsel for the appellant, the main question which was debated before the Court was with regard to the decision of the Court below on the issue whether a Claims Tribunal exercising powers under Sec. 110 of the Motor Vehicles Act, 1939 has jurisdiction to entertain a claim against the Railway. The contention raised by the Union of India (the applicant therein)

through the General Manager, Northern Railway was that the claims in question - all of which had arisen out of the same accident involving a Tempo-Taxi and the Allahabad-Saharanpur passenger train, were not maintainable against the Railway as under the Act a decree can be passed only against the insurer or owner or driver of the motor vehicle involved in the accident. It cannot be passed against anyone else. The Court held thus:

"The Claims Tribunals have been constituted in our opinion, to entertain all claims in respect of accidents arising out of the use of motor vehicle. It cannot be disputed that where the death or bodily injury is caused to the claimant in an accident arising out of the use of motor vehicle and as a result of the negligence of the owner or the driver of the motor vehicle as well as of a third party, the claim so far as the owner or insurer or the driver of the motor vehicle are concerned would lie before the Claims Tribunal under the Act in terms of Sec. 110. The Civil Court will indisputably have no jurisdiction to entertain the claim against the insurer or owner or driver in view of the express bar imposed by Sec. 110-F.

14. If, therefore, we were to accept the submission of the applicant it must follow as a necessary corollary that in regard to the same accident as against the third party, the claim would lie elsewhere, namely, the Civil Court. In that event it would not be difficult to see that two conflicting decisions are likely to come into existence. The Tribunal may hold the driver of the motor vehicle wholly at fault and responsible for the accident and on that ground award compensation against the owner of the motor vehicle or the driver or the insurer. The Civil Court may, on the other hand, seized of the case against the third party in respect of same accident, may come to an exactly opposite conclusion and hold someone else responsible for the accident and bodily injuries to the claimant.

15. Such a result cannot have been intended by the Legislature. On the plain language of Sec. 110, therefore, we have no hesitation in coming to the conclusion that the claims in question were maintainable against the Railway. In our opinion a complete adjudication of all the claims for compensation in respect of an accident arising out of the use of the motor vehicle was intended to be provided for under the Act and consequently unless all the parties involved in the accident are arrayed as opposite parties before the same forum and are heard on the question of negligence, the matter cannot be properly and effectively disposed of. For, otherwise, if the claimant is compelled to institute his claim before the Tribunal only against the owner and driver of the vehicle and insurer and is left to sue the remaining persons responsible for the accident, the adjudication cannot be said to be complete and final.

Under the circumstances, the only reasonable interpretation which has appealed to us is that suggested by the learned Counsel for the claimants, namely, that the claims were maintainable against the Railway also."

9. Reference may also be made to the decision of the Punjab and Haryana High

Court in *Narinderpal Singh Vs. Punjab State and Others*, , which again was rendered in the context of Sec. 110B of the 1939 Act. The Court was dealing with the question as to whether it was the duty of the Tribunal to apportion the liability between the two drivers. It was held thus:

"13. First referring to the Motor Vehicles Act, 1939 (for short "the Act"), Sec. 110B whereof clearly provides that it shall be the duty of the Tribunal to make an award.

"Determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid; and in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be."

The aforesaid quotation is the reproduction of latter part of Sec. 110B of the Act. The quotation enjoins upon the Tribunal not only to determine the amount of compensation payable but also the amount, which is payable by the Insurance Company or owner or driver of the vehicle, or by all or any of them. This means the Tribunal's jurisdiction extends to awarding the amount against all some or one of the respondents, and if this is to be done, the Tribunal has to apply its mind on all those matters and if there are two vehicles invoked and their drivers are found negligent, then the Tribunal has to apportion the amount and has to see how much would be the liability of the driver and owner of the one vehicle and that of the other. Assuming for the sake of argument that both the vehicles are insured then the Tribunal has to apportion the liability between the two Insurance Companies. In a given case, it is possible that one vehicle may be insured and the other may belong to Government or a private person, but not insured, then also the Tribunal has to apportion the liability so that the Insurance Company would know its liability for the insured vehicle and of the other, that is, the Government or the private owner. This is only for the purpose of inter se liability of the two vehicles found negligent but this determination has no effect on the claimant because in law he is entitled to recover the entire amount jointly and severally. Therefore, on a reading of the provision it is clear that while awarding the amount in a case of composite negligence, the Tribunal can direct the payment of the entire compensation jointly and severally, but at the same time would apportion the liability between the two owners for their facility, and if both the owners or the two Insurance Companies, as the case may be, pay the amounts to the claimant in proportion as awarded by the Tribunal, there will be no problem for the claimant. But in case, any one of the parties liable does not want to honour the award of the Tribunal, it will be open to the claimant to recover the entire amount from the other, leaving such party to claim rateable distribution from the owner of the other vehicle involved in the accident and found negligent by the Tribunal. Therefore, on the basis of the provisions of the Act mentioned above, it can safely be held that the Tribunal has the jurisdiction to apportion the liability, even in the case of the composite negligence.

17. The matter relating to joint and several liability is discussed in Para 102 of the aforesaid book, under the head "Negligence". The relevant passage for our purpose is as under:

"While, in order to create a joint liability for an injury, the negligent acts of the parties sought to be charged must have concurred in producing it, where there is the necessary concurrence in producing the effect or result, or, in other words, where the negligence of two or more persons naturally and directly combines and co-operates to produce a single indivisible injury to a third person, the rule that the persons guilty of the negligence are jointly and separately liable applies not only where the tort-feasors are acting together, or there is a common design or purpose, or concert of action, or a breach of a common duty owing by them, but also where their acts of negligence are separate and independent, there is no voluntary intentional concert of action between or among them, no community of design, or no common duty resting on them, and the liability of each is grounded on an independent theory. Joint and several liability is not defeated by the mere fact that the negligence of one preceded that of the other in point of time, or by the fact that the accident would not have occurred but for the joint or concurrent negligence of the other.....".

18. Referring to the decided cases cited before us by both the sides we find that the matter of contributory negligence and joint tort-feasors was not gone into in depth and one or the other word was used in the judgment while apportioning the compensation. Therefore, we do not consider it necessary to discuss in detail the decided cases cited before us except Mukhtiar Singh's case, 1986 (1) 89 Punj. L.R. 600 (supra).

19. Having considered the provision of Sec. 110B of the Act, quoted above, view expressed in Halsbury's Laws of England, view expressed in Corpus Juris Secundum and the decided cases, we find it clear that it is the duty of the Tribunal to apportion the compensation even in the case of joint and several liability, without which it would not be a complete determination by it. Moreover, when exclusive jurisdiction has been given to the Tribunal it would not be proper to say that inter se between the two joint tort-feasors there should be fresh litigation before a Civil Court in separate proceedings and that Court should decide the dispute. It is another cardinal rule of jurisprudence that multiplicity of proceedings on the same matter should be avoided and unless it is expressly provided or is the necessary intendment the interpretation should be such that a Tribunal of exclusive jurisdiction should finally decide the dispute on all matters between them and should not leave any part to be gone into in a separate suit before another Court of law. As has been noticed above, it is the expressed provision in Sec. 110B of the Act that inter se dispute between the joint tort-feasors has also to be decided, whether all of them are liable and to what extent, and it not then which of them and for how much amount. Therefore, we hold that Mukhtiar Singh's case, [1986 (1) 89 Punj. L.R. 600] (supra) is correctly decided

and the learned Judge was right in apportioning the compensation between the two joint tort-feasors by holding that, their liability would be joint and several so far as the claimant is concerned."

(Emphasis supplied)

10. In *Smt. Angoori Devi v. Shri Megh Raj* (supra), the Delhi High Court was called upon to answer the question as to whether the liability between two sets of tort-feasors could be apportioned. The Court held thus:

"12. In Law of torts "contributory negligence" and "composite negligence" are regarded as two different and distinct concepts. The first postulates an act or omission on the part of a claimant which is also found to contribute materially to damage or loss.

13. As against this, "composite negligence is understood to represent a situation where loss or damage is caused to a person because of the combined negligence of two other persons and in which there is no negligence on his part. The claimant in this does not contribute in accident which results in death or injury and it is tort-feasors who become jointly and severally liable for the loss and damages. A claimant could sue them jointly and severally but where he sues them jointly, each tort-feasors becomes liable to pay for the loss and damages and in that case he may recover it from any one of them or from all.

14. It is in this context word "apportionment" has come to be attached and related to the case of contributory negligence. This has led to "apportionment" being understood as a division of liability between claimant(s) and the tort-feasors and reduction of loss/damages proportionate to claimants responsibility for the accident and on this premise it is made out that there could be no "apportionment" in case of a "composite" negligence wherein liability was joint and several. This is how the issue has been dealt with in the judgments of various High Courts relied upon by S.C. for appellant and mentioned hereinabove. It would be a repeat exercise to quote from these judgments which by and large reiterate that where there was no contributory negligence on the part of an accident victim, the question of apportionment would not arise.

14. We would have also fallen in line but for the provisions of Sec. 110B of the Old M.V. Act and Sec. 168 of the New Act, which empower the Tribunal not only to determine the amount of compensation payable but also to specify the amount which is payable by the insurer, or owner or driver or by all or any one of them. The relevant provision is reproduced hereunder and reads thus:

"Section 168. Award of the Claims Tribunal:- On receipt of an application for compensation made under Sec. 166, the Claims Tribunal shall, after giving notice of the application to the insurer and after giving the parties (including the insurer) an opportunity of being heard, hold an inquiry into the claim or, as the case may be, each of the claims, and subject to the provisions of Sec. 162 may make an award determining the amount of compensation which appears to it to

be just and specifying the person or persons to whom compensation shall be paid and in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them as the case may be."

16. A plain reading of this provision leaves no scope for doubt that it extends the jurisdiction of Tribunal to awarding compensation amount against all or some of the tort-feasors or even one. Where Tribunal finds that there are two vehicles 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 driver of one vehicle and that of the other. If both vehicles are insured, then it would have to specify the amount payable each, be that called apportionment or whatever. It could as well as be that one vehicle was insured and the other not insured, it would still have to undertake the exercise of specifying the amount payable by the insurer of one vehicle and the owner of the other, as the case may be.

17. All this appears to be a much ado about nothing because Tribunal by doing so only specifies inter se liability of owner/drivers of vehicle found negligent to cause accident and it does not affect the claimant/s any way, be it a case of composite negligence because he/she is entitled in law to recover the entire compensation in amount from all or any one of the tortfeasors jointly and severally. There is no problem where both sets of tortfeasors would satisfy the award. But if one of them failed, claimant would be within his/her rights to recover the whole amount from the other. It would be then for that party to claim rateable distribution from the defaulting one."

(Emphasis supplied)

11. Thus, the view taken by the Punjab and Haryana High Court and the Delhi High Court in the above referred decisions is in line with the view taken by this Court in the case of Gujarat State Road Transport Corporation v. Union of India (supra). On a conspectus of the above decisions, it is apparent that under the provisions of Sec. 168 of the Act, the jurisdiction of the Tribunal extends to awarding compensation against all or some of the tort-feasors or even one. 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 tort-feasors jointly and severally. By doing so, the Tribunal completes adjudication between the concerned parties so that future litigation inter se the joint tort-feasors 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.

12. At this juncture, reference may also be made to the provisions of Sec. 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 tort-feasors, insofar as the claimant is concerned, he can recover the entire amount of compensation from all the joint tort-feasors 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 Sec. 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 any way, 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 tort-feasors jointly or severally.

13. 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 Sec. 174 of the Act.

14. Adverting to the facts of the present case, the Tribunal after holding the driver of the truck and me driver of the jeep to be negligent to the extent of 65% and 35%, has thereafter not specified the amount of compensation payable by the owner/Insurance Company of the respective offending vehicles. In the light of the provisions of Sec. 168 of the Act, it was incumbent upon the Tribunal after holding that this was a case of composite negligence to specify the amount of compensation payable by the owner, driver and the Insurance Company of the truck and the owner and driver of the jeep in question. The appellant is, therefore, justified to the extent it has been contended that the Tribunal ought to have apportioned the extent of compensation payable by the owner/driver/insurance Company of the truck and owner/driver of the jeep for the purpose of deciding their inter se liabilities so as to obviate further litigation between the said parties. However, insofar as the claimants are concerned, mere could be no such apportionment, inasmuch as, in a case of composite negligence, it is open for me claimants to recover me entire amount from any one or all of the joint tort-feasors who have been held to be jointly and severally liable to pay me amount of compensation. However, in case the claimant recovers the entire awarded amount from me owner/driver/Insurance Company, as me case may be, of one of the offending vehicles, it would be open for the said party to recover me amount paid by him to the extent of the liability of the owner/driver/insurance Company as the case may be, of the other offending vehicle by instituting execution proceedings as if me award passed by me Tribunal is a decree between the owner/driver/Insurance Company, as the case may be, of both the offending vehicles and is adjudicated in favour of the party who has satisfied the award.

15. In me light of me above discussion, me appeal succeeds and is allowed to me following extent. It is held that the Tribunal, after holding that this was a case of composite negligence and that the liability of the truck driver was to me extent of 65% and that of the jeep driver was to the extent of 35%, ought to have specified me amount of compensation payable by the owner/driver/Insurance Company of the truck and me owner/driver of me jeep, as envisaged under Sec.

168 of the Act for the purpose of determining their inter se liabilities.

16. However, instead of remanding the matter to the Tribunal for the purpose of specifying the respective liabilities of the parties, in the opinion of this Court, this being a mere question of arithmetic, the amount can also be specified by this Court. The impugned award passed by the Tribunal to the extent it holds the truck driver liable to the extent of 65% and the jeep driver to the extent of 35% has not been challenged by any of the parties, and as such, the finding regarding the proportion of liability has become final. Therefore, the amount payable by the owner/driver/the Insurance Company, as the case may be, of the truck would be to the extent of 65% of the compensation and that of the jeep would be to the extent of 35%. The total compensation being Rs. 2,25,500/-, the inter se liability of the appellant-Insurance Company along with the respondent No. 4 would be to the extent of 65% of the compensation awarded by the Tribunal with interest at the rate of 9% per annum and that of the respondent Nos. 5 and 6 would be to the extent of 35% of the compensation with interest at the rate of 9% on the said amount. The apportionment made by the Court would amount to an award passed under Sec. 168 of the Act, and therefore, it would be permissible for the party who satisfies the award to have recourse to any of the provisions of the Act including Sec. 174 of the Act against the owner/driver/Insurance Company, as the case may be, of the other offending vehicle by treating the award to be a decree between the owner/driver/insurance Company, as the case may be, of each of the offending vehicles which has been adjudicated in favour of the party who has satisfied the award to the extent of the liability of the owner/driver/insurance Company, as the case may be, of the other offending vehicle. There shall be no order as to costs.