

(2010) 09 P&H CK 0404
In the Punjab And Haryana At Chandigarh
Case No : C.R. No. 6242 of 2009

Rachan Singh and Others

APPELLANT

Vs

Surinder Singh and Others

RESPONDENT

Date of Decision : 15-09-2010

Acts Referred:

Citation : (2010) 09 P&H CK 0404

Hon'ble Judges : Mahesh Grover, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Mahesh Grover, J.—The petitioners are aggrieved by the order dated 7.8.2009. An award of the Motor Accident Claims Tribunal came into existence on 21.9.2002 and the petitioners were awarded the compensation. While doing so and while determining the question of liability, the Tribunal had framed a specific issue to the following effect:

1. Whether the present accident has taken place due to rash and negligent driving of tractor trolley bearing registration No. HIA-6177 by the respondent No. 1 and truck No. PUV-3697 by the respondent No. 4 as alleged in the petition? OPP
2. The Tribunal thereafter on the basis of evidence concluded in para 14 that the accident on account of which fatal injuries were received by deceased Mewa Singh was caused due to the rash and negligent driving of both the vehicles being driver by Surinder Singh, respondent No. 1 and Kaka Singh, respondent No. 4, drivers of the tractor-trolley and truck, respectively. Thereafter, the Tribunal went on to award Rs. 7,20,000/- as compensation along with interest @ Rs. 9% per annum and directed the amount to be shared by all the five petitioners in equal shares and the liability to satisfy the award was fastened 50% each on both the parties. The petitioners thereafter preferred the execution petition in which the insurance company of one of the offending vehicles deposited 50% of the amount and the petitioners were left to fight for the

remaining 50% from the driver and owner of the tractor-trolley. The certificate for recovery of this 50% share was issued and sent to the quarter concerned by virtue of the impugned order.

3. The prayer of the petitioners is limited. They say that once the liability of the respondents in claim petition has been determined and they have been held to be joint tort-feasors, the petitioners have the option to sue one of them or both of them, and in the eventuality of suing both of them together also, they have the right to recover the entire amount from one of the joint tort-feasors. In support of their contention they relied upon a decision referred by a Full Bench of the Karnataka High Court reported as Karnataka State Road Transport Corporation Vs. Arun alias Aravind, wherein while noticing the judgment of the Supreme court reported as Union of India (UOI) Vs. United India Insurance Co. Ltd. and Others, it was observed in para 9 as under:

9. The Apex Court has held in Union of India (UOI) Vs. United India Insurance Co. Ltd. and Others, , that where the accident has occurred due to negligence of the drivers of two vehicles and not due to negligence of the claimant, one of the joint tort-feasors cannot plead contributory negligence on the part of the passengers of the vehicle and qua the passengers of the bus, who were innocent, the driver and owner of the vehicles would be joint tort-feasors. It is also held that the Motor Accidents Claims Tribunal is clearly an alternative forum in substitution of civil court for adjudicating upon claims for compensation arising out of the use of the motor vehicles. It is well settled that the liability of joint tortfeasors is joint and several and each is responsible, jointly with each and all of the others and also severally for the whole of the amount of damage caused by the tort, irrespective of the extent of his participation. The injured may sue any one of them separately for the full amount of loss or he may sue all of them jointly in the same action and even in the latter case, the judgment so obtained against all of them may be executed in full against any one of them.

4. The Full Bench then went on to conclude in para 14 as under:

14. In view of the above discussion, we answer the referred question by holding that the Full bench decision in Ganesh Vs. Syed Munned Ahamed and Others, , does not require any reconsideration. It is seen that in an accident case, generally the insurance company is liable to pay compensation as per the terms of the policy. But, when the accident is on account of composite negligence of two or more vehicles, the claimant is entitled to proceed against any of the tortfeasors for full compensation for the injuries suffered or the death caused, as the liability is joint and several. The question of apportionment does not arise, if the other joint tortfeasor has not been impleaded as party. However, after ascertaining and impleading the other joint tortfeasor as a party, the tortfeasor can exercise his right of contribution in accordance with law. In other words, when the other joint tortfeasor is not a party, the Tribunal should refrain from giving any finding about apportionment of negligence, in the absence of other tortfeasor, to avoid any exercise in futility and leave the said question of liability

of joint tortfeasors to be adjudicated, if the joint tortfeasor who satisfies the award is able to find out the name of the other joint tortfeasor and seeks to exercise right of contribution in accordance with law.

5. Likewise position of law has been reiterated in Krishnappa Vs. P. Venkatanarayana and Others, , Dhapa Kanwar and Others Vs. Kishanlal and Another, , Mohanlal Vs. Balwant Kaur and Others, , Oriental Insurance Co. Limited v. Smt. Parveen Juneja 2002 (1) R.C.R. (Civil) 18 and Oriental Insurance Company Limited Vs. Pappu Servai and Others, .

6. Learned Counsel for the respondent-insurance company could not effectively offset any of the arguments raised by the learned Counsel for the petitioners and thus having regard to the aforesaid provisions of law as emanating from the judgments referred to above, I am of the opinion that the petitioners are entitled to recover the entire amount from the respondent-insurance company which had insured the vehicles, one of the tortfeasors to the accident. The amount shall be deposited by the insurance company within a period of four weeks from today. The insurance company shall, however, be at liberty to recover the same from the owner and driver of the tractor trolley.

7. Petition stands allowed.