

**(2016) 02 KAR CK 0399**

**In the Karnataka High Court**

**Case No : M.F.A. Nos. 442/2016 (MV) and 5323/2015 (MV)**

The Managing Director B.M.T.C. and Others

APPELLANT

Vs

Deanish M.A. and Others

RESPONDENT

---

**Date of Decision : 29-02-2016**

**Acts Referred:**

Motor Vehicles Act, 1988 — Section 117, Section 122, Section 149(2)

**Citation : (2016) 02 KAR CK 0399**

**Hon'ble Judges : Ram Mohan Reddy, J.**

**Bench : Single Bench**

**Advocate : K. Nagaraja, Advocate, for the Appellant;**

**Final Decision : Dismissed**

---

## **Judgement**

Ram Mohan Reddy, J.—1. Since common questions of law and that of fact arise for decision making, with the consent of the learned Counsel for the parties, appeals are clubbed together, finally heard and disposed of by this order.

2. MFA No. 442/2016 is filed by the Managing Director of BMTC, Bengaluru Central Office along with I.A. No. 1/16 to condone the delay of 119 days in filing the appeal on 13th January 2016 while MFA No. 5323/2015 is filed by the insured owner of the offending motor vehicle calling in question the judgment and award dated 6th June 2015 in MVC No. 4819/2012 on the file of MACT, Bengaluru (SCCH-13), [for short, "MACT"].

3. In the appeal preferred by the Managing Director of BMTC, the only submission of the learned Counsel is that the motor vehicle involved in the accident belonging to the appellant was insured with the United India Insurance Company Limited valid for the period 06.01.2011 to 05.01.2012 while the accident occurred on 23.11.2011 and the Insurance Policy was in force as on that date. According to the learned Counsel, although a memo was filed before the MACT to implead the insurer of the motor vehicle, the claimant-injured did not implead the said Insurance Company and the MACT having attributed composite

negligence of the drivers of the two vehicles involved, there was a need to implead the Insurance Company, which insured the motor vehicle belonging to the appellant.

4. In the light of the decision of the larger Bench of the Apex Court in the case of KHENYEI v. NEW INDIA ASSURANCE COMPANY LIMITED AND OTHERS , (2015) 9 SCC 273, Hon''ble Justice H.L. Dattu, the Chief Justice observed thus:

"15. There is a difference between contributory and composite negligence. In the case of contributory negligence, a person who has himself contributed to the accident cannot claim compensation for the injuries sustained by him in the accident to the extent of his own negligence; whereas in the case of composite negligence, a person who has suffered has not contributed to the accident but due to the outcome of combination of negligence of two or more other persons. This Court in T.O. Anthony v. Karvarnan & Ors. [, 2008 (3) SCC 748] has held that in case of contributory negligence, 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. It is only in the case of contributory negligence that the injured himself has contributed by his negligence in the accident. Extent of his negligence is required to be determined as damages recoverable by him in respect of the injuries have to be reduced in proportion to his contributory negligence. The relevant portion is extracted hereunder:

"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 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 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.

7. Therefore, when two vehicles are involved in an accident, and one of the drivers claims compensation from the other driver alleging negligence, and the other driver denies negligence or claims that the injured claimant himself was negligent, then it becomes necessary to consider whether the injured claimant was negligent and if so, whether he was solely or partly responsible for the accident and the extent of his responsibility, that is his contributory negligence.

Therefore where the injured is himself partly liable, the principle of "composite negligence" will not apply nor can there be an automatic inference that the negligence was 50:50 as has been assumed in this case. The Tribunal ought to have examined the extent of contributory negligence of the appellant and thereby avoided confusion between composite negligence and contributory negligence. The High Court has failed to correct the said error."

The decision in *T.O. Anthony v. Karvarnan & Ors.* (supra) has been relied upon in *Andhra Pradesh State Road Transport Corpn. & Anr. v. K Hemlatha & Ors.* [, 2008 (6) SCC 767].

16. In *Pawan Kumar v. Harkishan Dass Mohan Lal & Ors.* [, 2014 (3) SCC 590], the decisions in *T.O. Anthony* (supra) and *Hemlatha* (supra) have been affirmed, and this Court has laid down that where plaintiff/claimant himself is found to be negligent jointly and severally, liability cannot arise and the plaintiffs claim to the extent of his own negligence, as may be quantified, will have to be severed. He is entitled to damages not attributable to his own negligence. The law/distinction with respect to contributory as well as composite negligence has been considered by this Court in *Machindranath Kernath Kasar v. D.S. Mylarappa & Ors.* [, 2008 (13) SCC 198] and also as to joint tortfeasors. This Court has referred to *Charlesworth & Percy* on negligence as to cause of action in regard to joint tortfeasors thus:

"42. Joint tortfeasors, as per 10th Edn. of *Charlesworth & Percy* on Negligence, have been described as under:

"Wrongdoers are deemed to be joint tortfeasors, within the meaning of the rule, where the cause of action against each of them is the same, namely, that the same evidence would support an action against them, individually..... Accordingly, they will be jointly liable for a tort which they both commit or for which they are responsible because the law imputes the commission of the same wrongful act to two or more persons at the same time. This occurs in cases of (a) agency; (b) vicarious liability; and (c) where a tort is committed in the course of a joint act, whilst pursuing a common purpose agreed between them."

17. The question also arises as to the remedies available to one of the joint tortfeasors from whom compensation has been recovered. When the other joint tortfeasor has not been impleaded, obviously question of negligence of non-impleaded driver could not be decided apportionment of composite negligence cannot be made in the absence of impleadment of joint tortfeasor. Thus, it would be open to the impleaded joint tortfeasors after making payment of compensation, so as to sue the other joint tortfeasor and to recover from him the contribution to the extent of his negligence. However, in case when both the tortfeasors are before the court/tribunal, if evidence is sufficient, it may determine the extent of their negligence so that one joint tortfeasor can recover the amount so determined from the other joint tortfeasor in the execution proceedings, whereas the claimant has right to recover the compensation from

both or any one of them."

5. In that view of the matter, injured in the motor vehicle accident is not required to arraign all the parties who are joint tortfeasors and may proceed to institute the claim against any of the joint tortfeasors or all of them for recovery of entire amount of compensation. It is too farfetched for the appellant-BMTC to contend that the Insurance Company which insured its vehicle was not made a party and therefore the claim petition has to be dismissed for non-joinder of the parties. If the appellant has a contract of indemnity, it is open for it to institute legal proceeding to recover the amounts from the indemnifier.

6. The faint submission of the learned Counsel for the appellant that if the appellant were to make payment of the compensation to the claimant, as apportioned by the MACT, attributing composite negligence on the appellant, generally, the Insurance Company which insured the motor vehicle in question would not make payment and the appellant will be constrained to further litigate by filing a suit for recovery of the money in terms of the indemnity is noticed only to be rejected.

7. Further faint submission of the learned Counsel is that under Section 149(2) of the Motor Vehicles Act, 1988, the Insurance Company will have a right to advance a plea in defence and take up all such pleas before MACT and therefore, the insurer-appellant was a necessary and proper party and having not done so, the claim petition has to be rejected, is also noticed only to be rejected, in the light of authoritative pronouncement of the judgment of the Apex Court over a claimant making a choice of arraigning the respondents as one of the joint tortfeasors.

8. On merit, I find no grounds made out by the BMTC.

9. The delay of 119 days in filing the appeal by the Corporation, according to the learned Counsel, is sought to be explained in the affidavit accompanying I.A.1/16 by stating that the judgment and award was passed on 06.06.2016 and their advocate applied for the certified copy on 16.06.2016 and though the applicant was required to appear on 03.07.2015 to secure the copy, he appeared and secured the copy on 26.06.2015. After which, the advocate forwarded the same to the Law Department, Central Office, BMTC, Bengaluru and the concerned case workers processed the papers and placed before the Assistant Law Officer on 31.10.2015. The Law Officer made a detailed note and placed the same before the Chief Law Officer. The Chief Law Officer expressed to file Review Petition after obtaining the approval from the Director (S & V) as per office note dated 18.11.2015. The Director (S & V) instructed the office to discuss the matter. After discussion on 11.12.2015 since the insurer of the Lorry filed the appeal, the Director (S & V) expressed his view to file an appeal instead of filing Review Petition and the said office note was made on 18.12.2015 by the Chief Law Officer. The Director (S & V) approved the same on 31.12.2015. Thereafter, a letter has been addressed to the advocate on 01.01.2016 requesting to file an

appeal and the relevant papers along with the records were sent to the advocate, who received the same on 06.01.2016. Hence, the appeal filed on 13.01.2016.

10. The explanation for the inordinate delay of 119 days are demonstrated in the affidavit accompanying the application. Negligence, inaction and lack of bonafides is attributable to the BMTC. The Corporation was required to file the appeal within the time stipulated.

11. I.A. No. 1/16 is rejected and it is axiomatic that the appeal must be dismissed.

12. MFA 5323/2015 is filed by the insurer of the lorry bearing certificate of Registration No. AP-07-U-8783 on the premise that the driver of the lorry did not possess a valid and effective driving licence as on 23.11.2011 when the accident involving the said vehicle occurred.

13. It is the assertion of Sri. B.C. Shivannegowda, learned Counsel for the insurer-appellant that when the insured was called upon to produce the driving licence of the driver who parked the motor vehicle on the public street which caused the accident, which when not placed before the MACT, the finding fastening liability to pay compensation, on the Insurance Company of the said lorry is illegal.

14. The MACT having regard to the police records as well as the testimony of the claimant, a passenger in the bus belonging to the appellant in MFA No. 442/2016 i.e., BMTC and in the absence of testimony of both drivers of the vehicles i.e., the offending lorry insured by the appellant as well as the bus belonging to BMTC and placing reliance upon the spot mahazar, Ex. P3 and spot sketch, Ex. P2 recorded a finding that the offending lorry was parked in the middle of the road without any indication by switching on the parking lights when the accident occurred at about 7.10 a.m. whence the BMTC bus dashed against the lorry. The MACT recorded a finding of negligence that BMTC driver as well as the driver of the Lorry equally contributed in causing the accident. That finding when not questioned, is final and binding on the parties.

15. Section 117 of the Motor Vehicles Act, 1988 reads thus:

"117. Parking places and halting stations: The State Government or any authority authorized in this behalf by the State Government may, in consultation with the local authority having jurisdiction in the area concerned, determine places at which motor vehicles may stand either indefinitely or for a specified period of time, and may determine the places at which public service vehicles may stop for a longer time than is necessary for the taking up and setting down of passengers."

16. Section 122 of the Motor Vehicles Act, 1988 reads thus:

"122. Leaving vehicle in dangerous position: No person in charge of a motor vehicle shall cause or allow the vehicle or any trailer to be abandoned or to

remain at rest on any public place in such a position or in such a condition or in such circumstances as to cause or likely to cause danger, obstruction or undue inconvenience to other users of the public place or to the passengers."

17. Rule 109 of the Central Motor Vehicles Rules, 1989 reads thus:

"109. Parking light: Every construction equipment vehicle and every motor vehicle other than motor cycles and three wheeled invalid carriages shall be provided with one white or amber parking light on each side in the front. In addition to the front lights, two red parking lights one on each side in the rear shall be provided. The front and rear parking lights shall remain lit even when the vehicle is kept stationary on the road:

Provided that these rear lamps can be the same as the rear lamps referred to in rule 105 sub-rule (2):

[Provided also that construction equipment vehicles, which are installed with flood light lamps or spot lights at the front, rear or side of the vehicle for their off highway or construction operations, shall have separate control for such lamps or lights and these shall be permanently switched-off when the vehicle is traveling on the road.]"

18. Regulation 15 of the Rules of the Road Regulations, 1989 reads thus:

"15. Parking of the vehicle: (1) Every driver of a motor vehicle parking on any road shall park in such a way that it does not cause or is not likely to cause danger, obstruction or undue inconvenience to other road users and the manner of parking is indicated by any sign board or markings on the road side, he shall park his vehicle in such manner.

(2) A driver of a motor vehicle shall not park his vehicle:--

(i) at or near a road crossing, a bend, top of a hill or a humpbacked bridge;

(ii) on a foot-path;

(iii) near a traffic light or pedestrian crossing;

(iv) in a main road or one carrying fast traffic;

(v) opposite another parked vehicle or as obstruction to other vehicle;

(vi) alongside another parked vehicle;

(vii) on roads or at places or roads where there is a continuous white line with or without a broken line;

(viii) near a bus stop, school or hospital entrance or blocking a traffic sign or entrance to a premises or a fire hydrant;

(ix) on the wrong side of the road;

(x) where parking is prohibited;

(xi) away from the edge of the footpath."

19. A bare reading of the aforesaid statutory provisions makes it abundantly clear that no persons in charge of the motor vehicle is entitled as a matter of right to park the motor vehicle in the middle of the road so as to cause obstruction to the free passage of vehicles. In the instant case, MACT recorded a finding that the offending lorry insured by the appellant-Insurance Company was parked in the middle of the road without any indication, the root cause for the accident and if that is so, fastening of the composite negligence on the drivers of both the vehicles, when not questioned is final and binding.

20. Merely because the appellant-Insurance Company made a request to the insured/owner of the lorry to make available the driving licence of the driver of the lorry which was not conceded by itself and nothing more, it cannot be said that the appellant had a valid defence as contemplated under Section 149(2) of the Motor Vehicles Act, 1988. The appellant neither secured the authorities of the Road Transport Department nor the Investigating Officer who investigated into the alleged offence to place before the MACT relevant information over the existing or non-existing of a valid and effective driving licence of the driver of the offending lorry. When the appellant had the opportunity before the MACT to secure such information as also the testimony of the officers of the Road Transport Department, having not done so, no adverse can be drawn against the owner/insured of the motor vehicle.

21. Appeal filed by the Insurance Company is hopelessly meritless and deserves to be dismissed.

22. In RUKMINI AND OTHERS v. NEW INDIAN ASSURANCE CO. AND OTHERS , (1998) 9 SCC 160, the Apex Court had an occasion to consider material facts such as the testimony of a Inspector of Police who on enquiry it revealed that the driver did not produce the licence to drive the scooter and even on demand, he did not submit the licence since he was not having it, while in the cross-examination, admitted that he was required to check whether the licence is there but he had not informed the Inspector of Motor Vehicles that the driver was not having a licence, since he thought it was not necessary, which it is observed is not sufficient to discharge the burden cast on the Insurance Company. The Apex Court further observed that no summons was issued to the driver of the scooter. No record from the Road Transport Authority has been produced. In these circumstances, it is observed that the Insurance Company did not discharge the burden cast upon it under Section 96(2)(b)(ii) of the Motor Vehicles Act, 1939, which is *pari materia* with Section 149(2) of the Motor Vehicles Act, 1989.

23. Appeals filed by the BMTC as well as the insurer of the offending motor vehicle being devoid of merit are dismissed.

The amount, in deposit, is directed to be transmitted to the MACT forthwith.

After the judgments were dictated, the learned Counsel for the Insurance

Company-appellant seeks leave of the Court to withdraw the appeal.  
The submission is noticed only to be rejected.