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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CM-14269-CII-2025 in/and
CR-2062-2024 (O&M)
Date of decision: 14.10.2025

Hajar Khan @ Hajarkhan

...Petitioner

Versus

Hanif Khan and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Divij Datt, Advocate for the petitioner.

Mr. Sanjeev Kodan, Advocate
for respondent No.3-Insurance Company.

VIKAS BAHL, J. (ORAL)

CM-14269-CII-2025

1. This is an application filed under Order 9 Rule 9 read with Section 151 CPC for restoration of the case and recalling of order dated 03.07.2025.

2. For the reasons stated in the application which is duly supported by an affidavit, the present application is allowed and order dated 03.07.2025 is recalled and the main case is restored to its original number and is taken on Board today itself for final disposal.

Main case

1. This is a revision petition filed under Article 227 of the Constitution of India for quashing/setting aside the order dated 20.11.2023 passed by the Motor Accident Claims Tribunal, Gurugram vide which the application filed by respondent No.3 for impleading the driver, owner and insurer of vehicle bearing No.HR-58A-4291 has been allowed.



2. On 09.10.2025, this Court had passed the following order:-

“Present:- Mr. Divij Datt, Advocate for the applicant-petitioner.

Mr. Sanjeev Kodan, Advocate for respondent No.3-Insurance Company.

Learned counsel for the applicant-petitioner has submitted that the petitioner is dominus litis and it is his choice to implead the parties against whom he is seeking relief. It is further submitted that the petitioner cannot be forced to implead the persons with whom he does not want to litigate.

*Learned counsel for the petitioner has relied upon the judgment of the Hon'ble Supreme Court in case titled as **“Khenyei Vs. New India Assurance Co. Ltd. & Ors.”**, reported as **2015(9) SCC 273**, to submit that in the case of composite negligence, the petitioner is entitled to sue both or any one of the joint tort feasons and to recover the entire compensation as liability of joint tort feasons is joint and several and that in case other joint tort feasons are not impleaded, then, it is open for the joint tort feason who has been made a party, after payment of the compensation, if so desires, to proceed against the other joint tort feasons in independent proceedings after the passing of the decree or award. It is submitted that by virtue of the impugned order, the claim petition filed by the petitioner in the year 2019 is being unnecessary delayed.*

Learned counsel for respondent No.3 prays for an adjournment to get instructions in the matter.

Adjourned to 14.10.2025.

To be taken up in the urgent list.

October 09, 2025”

3. Learned counsel for the petitioner has reiterated the arguments raised on 09.10.2025 and has further highlighted the relevant portion of the



judgment of the Hon'ble Supreme Court in **Khenyei Vs. New India Assurance Co. Ltd. & Ors.**, reported as **2015(9) SCC 273** which is reproduced hereinbelow:-

“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 feasons is joint and several.*
- (ii) In the case of composite negligence, apportionment of compensation between two tort feasons 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 tort feasons 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 tort feasons 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 tort feason 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 tort feasons. In such a case, impleaded joint tort feason should be left, in case he so desires, to sue the other joint tort feason in independent proceedings after passing of the decree or award.*

19. Resultantly, the appeals are allowed. The judgment and order passed by the High Court is hereby set aside. Parties to bear the costs as incurred.”



4. It is submitted that a perusal of the above judgment would clearly show that it is option of the plaintiff-claimant to sue both or any one of the joint tort feasons and to recover the entire compensation from any joint tort feason as liability of joint tort feasons is joint and several.

5. Learned counsel for respondent No.3-Insurance Company has submitted that in view of the abovesaid judgment, the impugned order be set aside but the right of respondent No.3, as has been detailed in sub para (iv) of the abovesaid judgment to sue the other joint tort feason in independent proceedings, after passing of the decree or award, be kept alive.

6. Keeping in view the abovesaid facts and circumstances and fair stand taken on behalf of learned counsel for the petitioner as well as learned counsel for respondent No.3 and also in view of the law laid down by the Hon'ble Supreme Court in the case of *Khenyei* (Supra), the present revision petition is allowed and the impugned order dated 20.11.2013 vide which application filed by respondent No.3-Insurance Company for impleading driver, owner and insurance company of the vehicle bearing No.HR-58A-4291 has been allowed, is set aside.

7. It is clarified that setting aside of the said order would not come in the way of respondent No.3 to pursue its right as has been protected by sub-clause (iv) of the observations/directions in the case of *Khenyei* (Supra) which has been reproduced hereinabove.

8. All the pending miscellaneous applications, if any, shall stand disposed of in view of the abovesaid order.

14.10.2025

Pawan

(VIKAS BAHL)
JUDGE

Whether speaking/reasoned:- Yes/No
Whether reportable:- Yes/No