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

**FAO-1801-2014 (O&M)**

**Date of Decision : 15.09.2025**

New India Assurance Company Ltd. ... Appellant

Versus

Sarabjit Kaur and Others ... Respondents

**FAO-1802-2014 (O&M)**

New India Assurance Company Ltd. ... Appellant

Versus

Sarabjit Kaur and Others ... Respondents

**CORAM : HON'BLE MRS. JUSTICE ALKA SARIN**

Present : Mr. Ashwani Talwar, Advocate  
for the appellant in both the appeals.

Mr. Parvez Chugh, Advocate  
for respondent No.3 in FAO-1801-2014 and  
for respondent No.4 in FAO-1802-2014.

**ALKA SARIN, J. (Oral)**

1. This order shall dispose off both the above-captioned appeals filed by the Insurance Company challenging the awards dated 16.01.2014 passed by the Motor Accident Claims Tribunal, Sri Muktsar Sahib (hereinafter referred to as the 'Tribunal') in claim petitions being MACT-11-2012 and MACT-12-2012 filed by the claimant-Sarabjit Kaur.

2. The only ground for filing the present appeals is that it was held to be a case of composite negligence. Though the Insurance Company has

paid the entire amount of compensation to the claimants, however, it is unable to recover the same from the joint tortfeasor inasmuch as the Tribunal has failed to determine the extent of their negligence.

3. Leaned counsel for the appellant has relied upon the judgment in **Khenyei vs New India Assurance Co. Ltd. & Ors. [2015(4) RCR (Civil) 532]** to contend that the claimants can realize the amount from either of the tortfeasors however the joint tortfeasor would have the liberty to recover the same, after making the whole payment of compensation, from the other joint tortfeasor.

4. *Per contra* learned counsel for respondent No.3 would contend that the amount can only be recovered in execution proceedings and no order can be passed in the present appeal.

5. Heard.

6. In the present case it has been held to be a case of composite negligence however the Tribunal failed to determine the extent of the negligence. Though admittedly the claimants have recovered the entire amount of compensation from the Insurance Company, however, the Insurance Company is seeking recovery rights against the joint tortfeasor. Hon'ble Supreme Court in the case of **Khenyei** (supra) has held as under :

*“18. This Court in Challa Bharathamma & Nanjappan (supra) has dealt with the breach of policy conditions by the owner when the insurer was asked to pay the compensation fixed by the tribunal and the right to recover the same was given to the insurer in the executing court concerned if the dispute between the insurer and the owner was the subject-matter of determination for the tribunal*

*and the issue has been decided in favour of the insured. The same analogy can be applied to the instant cases as the liability of the joint tortfeasor is joint and several. In the instant case, there is determination of inter se liability of composite negligence to the extent of negligence of 2/3rd and 1/3rd of respective drivers. Thus, the vehicle – trailer-truck which was not insured with the insurer, was negligent to the extent of 2/3rd. It would be open to the insurer being insurer of the bus after making payment to claimant to recover from the owner of the trailer-truck the amount to the aforesaid extent in the execution proceedings. Had there been no determination of the inter se liability for want of evidence or other joint tortfeasor had not been impleaded, it was not open to settle such a dispute and to recover the amount in execution proceedings but the remedy would be to file another suit or appropriate proceedings in accordance with law. 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 tortfeasors and to recover the entire compensation as liability of joint tortfeasors is joint and several.*

*(ii) In the case of composite negligence, apportionment of compensation between two tortfeasors 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.”*

7. Since the joint tortfeason always has a right to recover the amount

of compensation, after paying the same to the claimants, from the other tortfeasor however in the absence of apportionment of the composite negligence it possibly cannot be done in the present case. In view thereof, this Court deems it appropriate to remand the present appeals to the successor Presiding Officer of the Tribunal concerned only for the purpose of determining the extent of composite negligence of both the joint tortfeasors.

8. The Tribunal concerned shall make an endeavour to decide the matter expeditiously, preferably within a period of two months.

9. The parties shall appear before the Tribunal concerned on **29.09.2025 at 10.00 am.**

10. Disposed off. Pending applications, if any, also stand disposed off.

15.09.2025  
jk

**( ALKA SARIN )**  
**JUDGE**

NOTE: Whether speaking/non-speaking: Speaking  
Whether reportable: YES/NO