

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****217****FAO-747-2000 (O&M)****Date of Decision : 15.01.2025**

Oriental Insurance Company Ltd.

....Appellant

VERSUS

Sukhwant Pal Kaur and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Ashwani Talwar, Advocate for the appellant.

Ms. Shruti Singla, Advocate for
Mr. Amit Kohar, Advocate for respondent Nos.1 to 5.Ms. Indu Bala, Advocate for
Mr. S.S. Grewal, Advocate for respondent No.6.

Mr. R.C. Kapoor, Advocate for respondent No.8.

ALKA SARIN, J. (Oral)

1. Present appeal has been preferred by the Insurance Company aggrieved by the award dated 12.10.1999 passed by the Motor Accident Claims Tribunal, Patiala (hereinafter referred to as the 'Tribunal').

2. Briefly the facts relevant to present *lis* are that on 06.04.1994 at about 05.30 pm near the bridge of SYL Canal, two buses, one bearing registration No.PAB-8655 and the other bearing registration No.PB-12-2258, had a head-on collision resulting in injuries to numerous people. Various claim petitions were filed. The Tribunal vide the impugned award held it to be a case of composite negligence.

3. The only argument raised by learned counsel for the appellant is that the amount of compensation should have been equally apportioned between both the vehicles as both were found negligent.

4. *Per contra* learned counsel for respondent No.8-United India Insurance Company Ltd. would contend that once it is case of composite negligence, the claimants are always at liberty to recover the amount of compensation from either of the tort-feasors.

5. Heard.

6. In the present case the only argument raised by learned counsel for the appellant is that since both the vehicles in question were found negligent, the amount of compensation ought to have been equally apportioned between both the tort-feasors. Hon'ble Supreme Court in the case of **Khenyei vs. New India Assurance Co. Ltd. & Ors. [2015 (2) RCR (Civil) 1019]** has held as under:

“14. There is a difference between contributory and composite negligence. In the case of contributory negligence, a person who has himself contributed to the extent 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 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, 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 of 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. In view of the above law, once it is held to be a case of contributory negligence, the claimants would always be at liberty to recover the entire amount of compensation from either of the tort-feasors.

8. In view of the above, I do not any merit in the present appeal and the same is accordingly dismissed. Pending applications, if any, also stand disposed off.

15.01.2025

jk

(ALKA SARIN)
JUDGE

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