Reserved on : 27.03.2025
Pronounced on : 22.04.2025

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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 22ND DAY OF APRIL, 2025

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.24449 OF 2024 (GM - AC)

C/W.

WRIT PETITION No.23821 OF 2024 (GM - AC)

IN WRIT PETITION No.24449 OF 2024

BETWEEN:

THE MANAGER
ICICI LOMBARD GENERAL INSURANCE
COMPANY LIMITED
9TH FLOOR, THE ESTATE NO.121
DICKENSON ROAD, M.G.ROAD
BENGALURU – 560 042

(COMPANY INCORPORATED UNDER
THE COMPANIES ACT, 1956
ON 13-10-2000 VIDE CERTIFICATE NO.11-129408)

REPRESENTED BY ITS LEGAL MANAGER
MR. ASHWIN K.,

... PETITIONER

(BY SRI KRISHNA KISHORE S., ADVOCATE)

AND:

1 . MR.RAHUL R.M.,
S/O RAJAN M.T.,
RESIDING AT MATTACKAL
MULLIAPPA COLONY
OTHERA WEST POST
KUTTOOR
PATHANAMTHITTA
KERALA – 689 551.

2 . MR.ABHISHEK M.,
NO.430, 11TH MAIN ROAD
2ND CROSS, ATTUR LAYOUT
YELAHANKA
BENGALURU – 560 064.

... RESPONDENTS

(BY SMT.AMBIKA M., ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASHING THE IMPUGNED ORDER DATED 01.07.2024 IN MVC NO. 6045/2022, ON THE FILE OF THE XXIII ASCJ AND ACJM, COURT OF SMALL CAUSES, BENGALURU AS PER ANNEXURE -F AND TO HOLD THAT THE PROPOSED R-3 TO 6 ARE NECESSARY PARTIES TO DISPOSE OF THE CLAIM PETITION ON MERITS BY THE TRIBUNAL WHILE ARRIVING THE CONCLUSION IN RESPECT OF NEGLIGENCE ISSUE TO THE CAUSE OF ACCIDENT.

IN WRIT PETITION No.23821 OF 2024

BETWEEN:

THE MANAGER
ICICI LOMBARD GENERAL INSURANCE COMPANY LIMITED
9TH FLOOR, THE ESTATE
NO.121, DICKENSON ROAD

M.G.ROAD
BENGALURU – 560 042
(COMPANY INCORPORATED UNDER
THE COMPANY'S ACT, 1956
ON 13-10-2000, VIDE CERTIFICATE NO. 11-129408)
REPRESENTED BY ITS LEGAL MANAGER
MR. ASHWIN K.

... PETITIONER

(BY SRI KRISHNA KISHORE S., ADVOCATE)

AND:

1 . MR.AJISHAD A.,
AGED ABOUT 48 YEARS
S/O MR. ABDUL KAREEM.

2 . SMT. RASHIDA E.,
AGED ABOUT 48 YEARS
W/O MR. AJISHAD A.,

3 . MR. RAKKOOD AJISHAD
AGED ABOUT 22 YEARS
S/O MR. AJISHAD A.,

ALL ARE RESIDING AT
ALAKKUKULAM PUNNAPRA S.O.,
ALAPPUZHA, KERALA – 688 004.

4 . MR. ABHISHEK M.,
NO. 430, 11TH MAIN ROAD
2ND CROSS, ATTUR LAYOUT
YELAHANKA, BENGALURU – 560 064.

... RESPONDENTS

(BY SMT.AMBIKA M., ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED ORDER DTD. 01.07.2024 IN MVC .NO. 6661/2022 ON THE FILE OF THE XXIII ASCJ AND ACJM, COURT OF SMALL CAUSES BENGALURU AS PER ANNX-F AND TO HOLD THAT THE PROPOSED R-3 TO 6 ARE NECESSARY PARTIES TO DISPOSE OF THE CLAIM PETITION ON MERITS BY THE TRIBUNAL WHILE ARRIVING THE CONCLUSION IN RESPECT OF NEGLIGENCE ISSUE TO THE CAUSE OF ACCIDENT.

THESE WRIT PETITIONS HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 27.03.2025, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: **THE HON'BLE MR JUSTICE M.NAGAPRASANNA**

CAV ORDER

The petitioner/ICICI Lombard General Insurance Company Limited who is common in both the petitions is at the doors of this Court calling in question a common order dated 01-07-2024 passed by the XXIII ASCJ & ACJM, Bengaluru, rejecting the application filed by the petitioner seeking to implead proposed respondents 3 to 6 as necessary parties to dispose of the claim petitions in M.V.C.Nos.6045 of 2022 and 6661 of 2022 on its merits, which concerns the same accident.

2. For the sake of convenience, facts obtaining in Writ Petition 24449 of 2024 are noticed.

3. Heard Sri S. Krishna Kishore, learned counsel appearing for the petitioner and Smt. M. Ambika, learned counsel appearing for the respondents in both the petitions.

4. Facts, in brief, germane are as follows:-

On 29-10-2022 when the 1st respondent one R.M. Rahul was driving a motorcycle bearing No.KA-04-EF-2074, along with one Arshid Ajishad, a pillion rider, a car bearing No.KA-50-MA-2520, the offending vehicle, hit the motorcycle of 1st respondent Rahul from behind. Due to the impact, both the 1st respondent and Arshid Ajishad suffered grievous injuries and Arshid Ajishad succumbs to the injuries and dies. On the accident, a crime comes to be registered in Crime No.230 of 2022 for offences punishable under Sections 187 and 134 (a & b) of the Motor Vehicles Act and Sections 304A, 337 and 279 of the IPC. Based upon the said accident, a claim petition is preferred by the 1st respondent against the petitioner invoking Section 166 of the Motor Vehicles Act, 1988 in M.V.C.No.6045 of 2022 before the Motor Accident Claims Tribunal, Bengaluru (‘the Tribunal’ for short) seeking compensation

of ₹20/- lakhs for the injuries sustained by him and huge compensation for the death of Ajishad.

5. The issue in the *lis* is not with regard to compensation. The Police after investigation file a charge sheet in Crime No.230 of 2022. In the charge sheet several accused are drawn. Accused No.1 was one L.Pavan Kumar, the driver of the offending car. Accused No.2 was a BBMP Officer, Accused No.3 was BBMP Contractor and Accused No.4 was the 1st respondent - R.M.Rahul. Based upon the charge sheet so filed by the jurisdictional Police against these persons, an impleading application comes to be filed by the petitioner invoking Order 1 Rule 10 (2) r/w 151 of the Code of Civil Procedure in both the claim petitions seeking to implead the owner, insurer of the motor cycle, BBMP contractor, BBMP official as proposed respondents to decide the issue of contributory negligence before the Tribunal. This, by the impugned order, comes to be rejected, the rejection of which has driven the petitioner to this court in the subject petitions.

6. The learned counsel appearing for the petitioner would contend that the Tribunal arbitrarily rejected the impleading

application filed for the purpose of apportionment of negligence. It is his submission that apportionment has to be done by the Tribunal only based on the facts and circumstances of the case. The learned counsel would submit that the jurisdictional Police after due investigation have drawn four people into the web of crime as they are necessary parties before the Tribunal to arrive at a proper conclusion *qua* negligence of those parties. It is the further submission that the Tribunal has erroneously interpreted the judgment of the Apex Court in rejecting the impleading application. It is contended that the Tribunal has failed to note that the claim petitions are filed under Section 166 of the Act, wherein the claimants are required to prove actionable negligence on the part of the rider or driver of the offending vehicle.

7. *Per contra*, the learned counsel appearing for the respondents would contend that the order of the Tribunal would not require any interference as in a motor vehicle accident case, the owner and driver are made responsible and that would be enough. While filing the petition, the claimants have categorically averred that at the time of accident, the driver of the car drove the vehicle

in a rash and negligent manner endangering human life, due to which, 1st and 3rd respondents were knocked down, sustained grievous injuries and the 3rd respondent succumbed to the injuries. None of the others are necessary to be impleaded into the proceedings. They are neither proper nor necessary parties for the adjudication. FIR, complaint and the charge sheet have been filed against the driver of the car for having driven it in a rash and negligent manner. The driver of the car is responsible and that would suffice. She would seek to place reliance upon judgment of the Apex Court in **KHENYEI v. NEW INDIA ASSURANCE COMPANY LIMITED AND OTHERS**[1].

8. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

9. The afore-narrated facts lie in a narrow compass. The issue in the *lis* is, whether all those accused who are drawn into the web of crime which arose out of an accident should be made as parties to the proceedings before the Claims Tribunal or otherwise for the

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[1] **(2015) 9 SCC 273**

purpose of apportionment of negligence. Details of the accident that has taken place; respondents suffering injuries and the 3rd respondent succumbing to the injuries are all narrated hereinabove. The link in the chain of events are all a matter of record and that would not require any reiteration. Two proceedings arise from a solitary accident – one, the claim petition filed before the Tribunal and the other, registration of crime in Crime No.230 of 2022 for the afore-quoted offences. In the crime, the police after investigation filed a charge sheet for offences punishable under Sections 279, 338 and 304(A) of the IPC and Sections 134(a & b), 187, 129 and 194D of the Motor Vehicles Act, 1988. The moment the charge sheet is filed, the petitioner comes with an application before the concerned Court. The application is to draw every accused who are charged of negligence in the criminal case to be impleaded as respondents in the claim petitions. This is the only reason narrated in the application. The affidavit so filed, reads as follows;

> "…. …. ….
>
> I state that, the petitioner filed the above petition claiming the compensation for the death of the deceased in the alleged accident. The averments made in the objection

statement may kindly be read as part and parcel of this affidavit. As stated therein the company got good case on merits and have got every chance of success. The accident was occurred due to the involvement of the two vehicles, and also the negligence of the BBMP officer and the contractor. Hence one vehicle is belonging to the Respondent-2 and another vehicle is motor cycle bearing No. KA-04-EF-2074 which belongs to the proposed respondent No.3 and the insurer of the Motor cycle is proposed respondent – 4, further the contractor of the BBMP office by named Yogesh is respondent-5 and the concerned BBMP office is Respondent-6, as mentioned in the application.

I further states that, the concerned police investigating officer investigated the case and filed the charge sheet against driver of both the vehicles together with the contractor of the BBMP as the accused for the offence punishable under section 187,134(a & b) of the INDIAN MOTOR VEHICLES ACT 1988 and section 304 (A), 337,279 of INDIAN PENAL CODE 1860. **I further states that the involvement and negligence of the BBMP is clearly mentioned in the charge sheet and unfortunately the concerned officer who caused the negligence was not made as the accused in the charge sheet. As such for all the practical purposes the BBMP is also the tart freezer and he is liable to pay the compensation, since the maintenance of the road will play an important role and if they maintain the road properly definitely the very accident itself would not been happened.**

I further sates that the one Arshad who is the deceased in the above case is also made as the accused-5 for an offence punishable under section 187,134(a & b) of the INDIAN MOTOR VEHICLES ACT 1988 and filed the abated charge sheet against the deceased.

I further states that, the contractor and the BBMP have entered into the agreement on 7-9-2020 as per the tender for the amount of Rs 14,87,86,300/- to maintain the road and drainages of the places mentioned in the agreement which included the spot of the accident. The zerox copy of the said agreement

is produced herewith for the kind consideration of this Hon'ble court. The said of the agreement is part of the charge sheet filed by the police investigating officer. As such it absolutely the clear conclusion that the gross negligence is on the part of the BBMP also to cause the accident. As such the BBMP is also necessary party to the present case.

I further states that, Considering the entire police records placed by the petitioner before this Hon'ble court, it is very clear that the entire negligence in on the part of the vehicle bearing No. KA-04-EF-2074 which belongs to the proposed respondent No.3 and the insurer is Respondent no-4, and the BBMP and the contractor who is proposed Respondent-5 and Respondent-6 accordingly. **As such the entire negligence is on the part of the proposed respondents to cause the accident. In view of the above facts and circumstances of the case and with full knowledge, the petitioner intentionally not made the proposed respondents a necessary party to the proceedings at the time of the filing the petition. The presence of the proposed respondents is absolutely necessary to the case on hand in order to dispose of the matter effectively, in the absence of the said proposed respondents it is highly impossible to this Hon'ble court to come to the fair conclusion.** As such the presence of the proposed respondents is very much essential and they are absolutely necessary party in the present case. Hence this application to implead the proposed respondents to the case on hand as the necessary parties. If this application not considered and the necessary orders is not passed as prayed for in the application, the company will be put to much hardship and great injustice. On the other hand no prejudice of any kind will be caused to the other side."

(Emphasis added)

10. Objections are filed by the claimants contending that the impleading applicants are not necessary parties. The concerned

Court in terms of the order impugned rejects the application seeking impleadment by the following order dated 01.07.2024:

"…. …. ….

9. The counsel for proposed respondent No.4 has furnished decision of Hon'ble High Court of Karnataka in **ILR 2016 KAR 55 M/s ICICI Lombard GIC Ltd., Vs. Smt. Bharathi S Reddy and others**, wherein the Hon'ble High Court of Karnataka has held that '*the charge sheet filed by the jurisdictional police is conclusive proof*'.

10. The counsel for petitioner has filed following decisions, Civil Appeal No.5113 of 2022 Anjana Narayan Kamble and others v. Reliance General Insurance Company Limited and another, wherein Hon'ble Supreme Court of India has held that 'violation of *MV Act when the deceased was traveling with three persons on a motorcycle may be liable to penalty but such violation by itself can not lead to finding a contributory negligence*'.

She has also furnished **AIR 2015 SC 2261 Khenyei v. New India Assurance Co.Ltd. and others** wherein the Hon'ble Supreme Court of India has held '*that in a case of joint tort feasors, where the liability is joint and several, it is the choice of the claimant to claim from the owner, driver and insurer of both the vehicles or anyone of them. If claim is made against one of them, entire amount of compensation on account of injury or death can be imposed against the owner, driver and insurer of that vehicle as their liability is joint and several and the claimant can recover the amount from any one of them.* ***There cannot be apportionment of claim of each tort feasors in the absence of proper and cogent evidence on record and it is not necessary to apportion the claim…. In such a case, each wrongdoer is jointly and severally liable to the injured for the payment of entire damages and the injured person has a 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*.'**

11. In the case on hand, the charge sheet at Ex.P8 is filed against the Car driver for rash and negligent driving and the allegation against the deceased under whom the petitioners are claiming is that he was not wearing helmet. The charge sheet has also made allegations against the contractor. However, from the decisions of the Hon'ble Supreme Court of India stated supra, the petitioner is at liberty to claim the compensation from any one of the tort feasors. Therefore, no grounds are made out by the respondent No.1 to implead the proposed respondent. Accordingly, I proceed to pass the following:

O R D E R

The application filed by the respondent No1. u/O.I. R.10 r/w Sec.151 of CPC is rejected.

For cross of PW-1 by 18-07-2024."

(Emphasis added)

It is this order that has driven the petitioner to this Court in the subject petitions. The strength on which the petitioner preferred the application is the summary of the charge sheet. It reads as follows:

"17. ಕೇಸಿನ ಸಂಕ್ಷಿಪ್ತ ಸಾರಾಂಶ

ಈ ದೋಷಾರೋಪಣ ಪಟ್ಟಿಯಲ್ಲಿ ನಮೂದಿಸಿರುವ ಎ-1 ಆರೋಪಿಯು ದಿನಾಂಕ: 29.10.2022 ರಂದು ರಾತ್ರಿ ಸುಮಾರು 11-00 ಗಂಟೆಯಲ್ಲಿ ಕೆಎ-50-ಎಂಎ-2520 ವೋಲ್ವೋ ವೋಗನ್ ಕಾರನ್ನು ಅತಿವೇಗ ಮತ್ತು ಆಜಾಗರೂಕತೆಯಿಂದ ಚಾಲನೆ ಮಾಡಿಕೊಂಡು ಉನ್ನಿಕೃಷನ್ ರಸ್ತೆ ಕಡೆಯಿಂದ

ಅಟ್ಟೂರು ಕಡೆಗೆ ಹೋಗಲು ಯಲಹಂಕ ಸಂಚಾರ ಪೊಲೀಸ್ ಠಾಣೆಯ ಸರಹದ್ದಿಗೆ ಸೇರಿದ ಅಟ್ಟೂರು ಮುಖ್ಯ ರಸ್ತೆಯಲ್ಲಿರುವ ವಿವೇಕಾನಂದ ಸ್ಕೂಲ್ ಮುಂಭಾಗ ಬಂದು, ರಸ್ತೆಯ ತಗ್ಗಿನಲ್ಲಿ ಕಾರನ್ನು ಇಳಿಸಿ ಏಕಾಏಕಿ ಬ್ರೇಕ್ ಹಾಕಿದ ಪರಿಣಾಮ ಕಾರು ನಿಯಂರತ್ರಣ ತಪ್ಪಿ ಹಲ್ಲೆಯಾಗಿ, ಅದೇ ರಸ್ತೆಯಲ್ಲಿ. ತನ್ನ ಎದುರುಗಡೆಯಿಂದ ಮೇಜರ್ ಉನ್ನಿಕೃಷ್ಣನ್ ರಸ್ತೆಯ ಕಡೆಗೆ ಹೋಗಲು ಅರ್ಷಿದ್ ಎಂಬಾತನನ್ನು ಕೆವಿ-04-ಇಎಫ್-2047ರ ಬೈಕ್ ಹಿಂಭಾಗ ಕೂರಿಸಿಕೊಂಡು ಸವಾರಿ ಮಾಡಿಕೊಂಡು ಬರುತ್ತಿದ್ದ ವಿ-4 ಆರೋಪಿಗೆ ಡಿಕ್ಕಿ, ಮಾಡಿದ ಪರಿಣಾಮ ಹಿಂಬದಿ ಸವಾರ ಅರ್ಪಿರ್ ಮತ್ತು ಎ–4 ಆರೋಪಿಗಳು ಬೈಕ್ ಸಮೇತ ರಸ್ತೆಯ ಮೇಲೆ ಬಿದ್ದು ಹೆಲ್ಮೆಟ್ ಧರಿಸದೆ ಇದ್ದ ಕಾರಣ ಅರ್ಷಿದ್ ನ ತಲೆಗೆ ಮತ್ತು ವಿ-4 ಆರೋಪಿಯ ಬೆನ್ನು ಮತ್ತು ಕೈ ಕಾಲುಗಳಿಗೆ ಗಂಭೀರವಾದ ಪೆಟ್ಟು ಬಿದ್ದಿರುತ್ತದೆ. ಕೂಡಲೇ ಸಾರ್ವಜನಿಕರು ಆರ್ಷಿಟ್ ಮತ್ತು ಎ-4 ಆರೋಪಿಯನ್ನು ನವಚೇತನ ಆಸ್ಪತ್ರೆಗೆ ಕರೆದುಕೊಂಡು ಬರುತ್ತಿರುವಾಗ, ರಸ್ತೆಯ ಮಧ್ಯೆ ಹಿಂಬದಿ ಸವಾರ ಅರ್ಷಿದ್ ಮೃತಪಟ್ಟಿರುತ್ತಾನೆ, ಎ-4 ಆರೋಪಿ ನವಚೇತನ ಆಸ್ಪತ್ರೆಯಲ್ಲಿ ದಾಖಲಾಗಿ ಚಿಕಿತ್ಸೆ ಪಡೆದಿರುತ್ತಾನೆ, ಅಪಘಾತ ಮಾಡಿದ ಎ-1 ಆರೋಪಿಯು ಕಾರನ್ನು ಸ್ಥಳದಲ್ಲಿಯೇ ಬಿಟ್ಟು ಓಡಿ ಹೋಗಿರುವುದು ಹಾಗೂ **ಸದರಿ ಅಪಘಾತವು ಸಂಭವಿಸಲು ಗುತ್ತಿಗೆದಾರನಾದ ಎ-3 ಆರೋಪಿಯು ಅಟ್ಟೂರು ಮುಖ್ಯ ರಸ್ತೆಯ ಘಟನಾ ಸ್ಥಳದಲ್ಲಿ ರಸ್ತೆಯ ತಗ್ಗುಗಳನ್ನು ಮುಚ್ಚದೆ ಇರುವುದು ಸಹ ಕಾರಣವಾಗಿರುವುದು ತನಿಖೆಯಿಂದ ದೃಢಪಟ್ಟಿರುತ್ತದೆ.**

ಸದರಿ ಆರೋಪಿಗಳು ಮೇಲ್ಕಂಡ ಕಲಂ ಅನ್ವಯ ಶಿಕ್ಷಾರ್ಹ ಅಪರಾಧವೆಸಗಿದ ಅವರುಗಳ ವಿರುದ್ಧ ಈ ಯೋಷಾರೋಪಣ ಪಟ್ಟಿ.''

(Emphasis added)

The summary of the charge sheet *inter alia* observes that the accident has taken place on account of rash and negligent driving of the offending car, the driver of which has ran away from the spot of the accident. The insurer of the car is the petitioner. The proposed respondents include the owner of the car. When the car involved in the accident becomes a tortfeasor along with other joint tortfeasors, it would not be necessary in a claim petition to draw every person

who become an accused in the charge sheet. The driver of the motor cycle/the 1st respondent, R.M. Rahul, is accused No.4; the deceased accused No.5, BBMP official and others are accused Nos.2 and 3. The reason for drawing them is that, there were potholes in the road and the contractor has done a shoddy work of asphalting of the road. It is ununderstandable as to how those people would be necessary to be made as parties which would absolve the insurance company *qua* the offending vehicle.

11. It is apposite to refer to the judgment of the Apex Court in the case of **KHENYEI** (*supra*) wherein the Apex Court holds as follows:

"…. …. ….

> **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* [(2008) 3 SCC 748 : (2008) 1 SCC (Civ) 832 : (2008) 2 SCC (Cri) 738] has held that in case of contributory negligence, the injured need not establish the extent of responsibility of each wrongdoer separately, nor is it necessary for the court to

determine the extent of liability of each wrongdoer 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 : (SCC pp. 750-51, paras 6-7)

> **"*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 wrongdoers, it is said that the person was injured on account of the composite negligence of those wrongdoers. In such a case, each wrongdoer, 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 wrongdoer separately, nor is it necessary for the court to determine the extent of liability of each wrongdoer 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 stand 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* [(2008) 3 SCC 748 : (2008) 1 SCC (Civ) 832 : (2008) 2 SCC (Cri) 738] has been relied upon in *A.P. SRTC* v. *K. Hemlatha* [(2008) 6 SCC 767 : (2008) 3 SCC (Cri) 34] .

16. In *Pawan Kumar* v. *HarkishanDass Mohan Lal* [(2014) 3 SCC 590 : (2014) 2 SCC (Civ) 303 : (2014) 4 SCC (Cri) 639] , the decisions in *T.O. Anthony* [(2008) 3 SCC 748 : (2008) 1 SCC (Civ) 832 : (2008) 2 SCC (Cri) 738] and *Hemlatha* [(2008) 6 SCC 767 : (2008) 3 SCC (Cri) 34] have been affirmed, and this Court has laid down that where the plaintiff/claimant himself is found to be negligent jointly and severally, liability cannot arise and the plaintiff's 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 *MachindranathKernathKasar* v. *D.S. Mylarappa* [(2008) 13 SCC 198 : (2009) 3 SCC (Cri) 519] and also as to joint tortfeasors. This Court has referred to *Charlesworth and Percy on Negligence* as to cause of action in regard to joint tortfeasors thus : (*MachindranathKernathKasar case* [(2008) 13 SCC 198 : (2009) 3 SCC (Cri) 519] , SCC p. 212, para 42)

> "*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.

18. This Court in *National Insurance Co. Ltd.* v. *Challa Upendra Rao* [(2004) 8 SCC 517 : 2005 SCC (Cri) 357] with respect to mode of recovery has laid down thus : (SCC p. 523, para 13)

> "*13*. The residual question is what would be the appropriate direction. Considering the beneficial object of the Act, it would be proper for the insurer to satisfy the award, though in law it has no liability. In some cases the insurer has been given the option and liberty to recover the amount from the insured. For the purpose of recovering the amount paid from the owner, the insurer shall not be required to file a suit. It may initiate a proceeding before the executing court concerned as if the dispute between the insurer and the owner was the subject-matter of determination before the Tribunal and the issue is decided against the owner and in favour of

> the insurer. Before release of the amount to the claimants, owner of the offending vehicle shall furnish security for the entire amount which the insurer will pay to the claimants. The offending vehicle shall be attached, as a part of the security. If necessity arises the executing court shall take assistance of the Regional Transport Authority concerned. The executing court shall pass appropriate orders in accordance with law as to the manner in which the owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the executing court to direct realisation by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle i.e. the insured. In the instant case, considering the quantum involved, we leave it to the discretion of the insurer to decide whether it would take steps for recovery of the amount from the insured."

19. In *Oriental Insurance Co. Ltd.* v. *Nanjappan* [(2004) 13 SCC 224 : 2005 SCC (Cri) 148] also, this Court has laid down thus : (SCC p. 226, para 8)

> "*8*. Therefore, while setting aside the judgment of the High Court we direct in terms of what has been stated in *Baljit Kaur case* [*National Insurance Co. Ltd.* v. *Baljit Kaur*, (2004) 2 SCC 1 : 2004 SCC (Cri) 370] that the insurer shall pay the quantum of compensation fixed by the Tribunal, about which there was no dispute raised, to the respondent claimants within three months from today. For the purpose of recovering the same from the insured, the insurer shall not be required to file a suit. It may initiate a proceeding before the executing court concerned as if the dispute between the insurer and the owner was the subject-matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. Before release of the amount to the claimants, owner of the vehicle shall be issued a notice and he shall be required to furnish security for the entire amount which the insurer will pay to the claimants. The offending vehicle shall be attached, as a part of the security. If necessity arises the executing court shall take assistance of the Regional Transport Authority concerned. The executing court shall pass appropriate orders in accordance with law as to the manner in which the insured, owner of the vehicle shall make payment to

> the insurer. In case there is any default it shall be open to the executing court to direct realisation by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle, the insured. The appeal is disposed of in the aforesaid terms, with no order as to costs."

20. This Court in *Challa Upendra Rao* [(2004) 8 SCC 517 : 2005 SCC (Cri) 357] and *Nanjappan* [(2004) 13 SCC 224 : 2005 SCC (Cri) 148] 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.

21. 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 the 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.

22. What emerges from the aforesaid discussion is as follows:

22.1. In the case of composite negligence, the 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.

> **22.2. In the case of composite negligence, apportionment of compensation between two tortfeasors vis-à-vis the plaintiff/claimant is not permissible. He can recover at his option whole damages from any of them.**
>
> **22.3.** In case all the joint tortfeasors 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 tortfeasors is only for the purpose of their inter se liability so that one may recover the sum from the other after making whole of the 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 the main case one joint tortfeasor can recover the amount from the other in the execution proceedings.
>
> **22.4.** 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 tortfeasors. In such a case, impleaded joint tortfeasor should be left, in case he so desires, to sue the other joint tortfeasor in independent proceedings after passing of the decree or award."

The Apex Court at paragraphs 22.1 and 22.2 holds that in cases of composite negligence, the claimant may sue both or any one of the joint tortfeasors to recover entire compensation or damages from any one of them as liability of joint tortfeasors is joint and several. Likewise, apportionment of compensation between the two tortfeasors is impermissible in law. The Apex Court also elucidates

the difference between composite and contributory negligence. The Court holds that in the case of contributory negligence, a person who has himself contributed to the accident cannot claim compensation as the accident has happened on account of his own negligence. In a case of composite negligence, the person who has suffered has not contributed to the accident. Therefore, in the light of what the Apex Court has held, the cases at hand is clearly a case of composite negligence and not contributory negligence.

12. In somewhat similar circumstance, the Madras High Court in **THE MANAGER, BAJAJ ALLIANZ GENRAL INSURANCE CO.LTD., v. S.VIMALA**[2] has held as follows:

> "…. …. …..
>
> 19. In that light, I would have to refer the judgment relied upon by Mr.S.Somasundaar in ***United India Insurance Co., Ltd., Kadapa vs. Veduka Ravi @ Ravindra and Others, 2007 SCC Online AP 732***. The High Court had to deal with an issue of impleading the owner and an insurer of an offending vehicle, which caused an accident. **That came to be rejected, against which a revision was preferred before the Andhra Pradesh High Court. The court held that Order I Rule 10 of the Code of Civil Procedure is applicable to the Tribunal in order to decide the real dispute in the OP in the presence of all those interested in the dispute. Therefore, while the**

[2] **C.R.P.(PD) Nos. 1166 & 1173 of 2023 and C.M.P.Nos. 8158 and 8110 of 2023 decided on 16-07-2024**

Page No.22 is retyped and replaced vide chamber order dated 24.04.2025

power under Order I Rule 10 is available with the Motor Accident Claims Tribunal, the Tribunal cannot decide the matters alien to the Motor Vehicles Act. This is because, the Tribunal is not a Civil Court for fixing the tortious liability on all persons, but it is a special Tribunal created for the purpose of deciding the matters which arise out of Motor Vehicle Accident or involving Motor vehicle.

…. …. ….

22. In view of the above, the verdicts relied upon by Mr.M.Somasundaar would show that the claimants themselves had alleged negligence on the part of the Railway Administration in the first case and Bangalore Mahanagara Palike in the second case.

23. Quite contrary to these facts, a perusal of the claim petition would show that the specific plea of the claimant is that the vehicle of the first respondent had been driven in a rash and negligent manner with great speed and it had hit the motor cycle causing the accident. The plea of the unguarded potholes, as found by the learned Trial Judge, was projected for the first time in the additional counter that was filed by the second respondent/Insurance Company. It is the case which has been projected by the second respondent that the accident occurred due to the potholes. It is not the case of the claimants that the accident occurred due to the existence of the potholes.

24. Furthermore, here is the case where the bus that was driven by the first respondent's driver did not come in the opposite direction and run over the deceased. The bus was running ahead of the bus. **If the bus driver had driven with caution then the situation of running over the deceased would not have arisen. It is only on account of the bus being driven in a rash and negligent manner**

as alleged by the claimants that the accident had occurred.

25. I should remember that in a proceeding under Order 1 Rule 10, the claimant is the Dominus Litis. If I were to implead the State Highways and National Highways as parties to the litigation, then I would be calling upon the claimants to prove a case which had not been pleaded by them. It is the clear and categorical case of the claimants that the accident occurred only due to the rash and negligent manner in which the offending vehicle belonging to the first respondent had been driven. They nowhere pleaded about the existence of the potholes.

26. A party cannot be impleaded on the basis of the pleadings of the respondent. It is always open to the respondent to disprove the case of the claimant and let in such evidence as may be necessary before the court. To implead a party on account of the defence taken by the defendant to deny the claim of the plaintiff, in my opinion, would not be justified. That would be throwing an additional burden on the claimant which was never in the contemplation when they presented the claim petition.

27. At this stage, Mr.M.Somasundaar would plead that the FIR has to be read as a whole and to that effect, he would rely upon the judgment in **Oriental Insurance Co. Ltd., vs. Premlata Shukla and Others, (2007) 2 TNMAC 106 (SC).** A perusal of the said judgment would show that Mr.M.Somasundaar is correct in the plea that the FIR has to be read as a whole and it cannot be read accepting a part of the contents while rejecting the remaining. That was a case wherein the FIR that had been presented on the death of one Sivanandha Prasad Shukla, it was specifically pleaded that the registration number of the offending truck was not known. The investigation which was launched subsequently

also came to the conclusion that the offending truck could not be traced. The claim petition which was filed against the driver, owner and the insurance company of the vehicle in which the deceased was travelling came to be dismissed on the ground that the claimant had not proved that the accident had occurred due to the rash and negligent act of the vehicle in which he was travelling.

28. This dismissal was reversed by the High Court relying upon the FIR filed in that matter. **The Supreme Court came to the conclusion that the entire FIR has to be read and one part cannot be accepted rejecting the other part. A proof of rashness and negligence on the part of the driver of the vehicle is sine qua non to fix the liability** and since that aspect had not been proved as against the vehicle in which the deceased was travelling, the Supreme Court reversed the verdict of the High Court.

29. In the facts of the present case, if the FIR is read as a whole, it is clear that the first informant had specifically pleaded that though the deceased fell off the vehicle after hitting the pothole, he suffered injuries on account of the fact that the vehicle belonging to the first respondent, which was being driven in a rash and negligent manner, ran over him. On a reading of the FIR as a whole, as held in **Oriental Insurance Co. Ltd., vs. Premlata Shukla and Others, (2007) 2 TNMAC 106 (SC)**, I am able to come to the conclusion that the accident occurred on account of the rash and negligent manner in which the offending vehicle was driven.

30. As rightly pointed by the Tribunal, if the deceased Harish had died on account of the fact that he fell down on the ground after the vehicle hit a pothole, they could not have maintained a petition before the

Motor Accident Claims Tribunal, but their remedy would have been only before the Civil Court.

31. The civil revision petitioner/insurance company can plead that there was no fault on part of the driver and on that ground, they can escape from the liability. For the said purpose, the presence of the State Highways Department or National Highways Authority is totally unnecessary."

(Emphasis supplied)

The aforesaid facts would fit into the facts obtaining in the case at hand. In the case at hand, the claimant has nowhere stated in the claim petition before the Tribunal that the accident was caused due to potholes on the road. Instead, it is the case of the claimant that the accident has caused due to rash and negligent driving of the driver of the car. The charge sheet filed after investigation in Crime No.230 of 2022 made a mention that the accident was of potholes. But, that does not mean that the claimants have contributed towards the accident being negligent. In the light of the aforesaid judgment of the Apex Court and that of the learned single Judge of the High Court of Madras to which I am in respectful agreement, the order impugned in these petitions would not warrant any interference.

10. Finding no merit in the petitions, the petitions stand rejected.

SD/-
(M.NAGAPRASANNA)
JUDGE

nvj
CT:MJ

Page No.27 is added vide chamber order dated 24.04.2025