Before G. C. Mital and S. D. Bajaj, JJ.

NARINDERPAL SINGH,—*Appellant.*

versus

PUNJAB STATE AND OTHERS,—*Respondents.*

F.A.O. No. 436 of 1986.

May 31, 1988.

Motor Vehicles Act (IV of 1939)—S. 110-B—Negligence—Joint tortfeasors—Case of composite liability—Determination of percentage of liability—Apportionment—Tribunal acting under Section 110-B—Whether has jurisdiction to determine inter-se liability between Joint tortfeasors in cases of composite liability.

Held, that on a reading of Section 110-B of the Motor Vehicles Act, 1939, it is clear that while awarding the amount of compensation in a case of composite negligence, the Tribunal can direct the payment of the entire compensation jointly and severally, but at the same time it would apportion the liability between the two owners. (Para 13).

Held, that it is the duty of the Tribunal to apportion the compensation even in the case of joint and several liability, without which it would not be a complete determination by it. Moreover, when exclusive jurisdiction has been given to the Tribunal, it would not be proper to say that *interse* between the two joint tortfeasors there should be fresh litigation before a civil court in separate proceedings and that Court should decide the dispute. Therefore, it has to be held that *interse* dispute between the joint tortfeasors has also to be decided, whether all of them are liable and to what extent, and if not, then which of them and for how much amount. (Para 19).

Mukhtiar Singh *v.* Smt. Krishna Gulati, 1986(1) P.L.R. 600 Upheld.

First Appeal from the order of the Court of Motor Accidents Claims Tribunal, Rupnagar, dated 10th February, 1986, accepting the claim petition and awarding compensation to the tune of Rs. 75,000 in aggregate to the claimants, along with interest at the rate of 12 per cent per annum from the date of petition till realisation. The award is given against the respondents who would be jointly and severally liable on account of composite liability.

Hemant Kumar, Advocate, *for the Appellant.*

K. B. Bhandari, Advocate, *for Respondents No. 1 and 2.*

JUDGMENT

Gokal Chand Mital, J.—

(1) Whether the Motor Accident Claims Tribunal (for short 'the Tribunal'), has the jurisdiction to determine the percentage of liability, in other words to apportion the liability of the tortfeasors *inter se* when in law their liability towards the claimants is joint and several, is the question posed in this appeal. The Motion Bench while admitting the appeal had entertained doubts on the correctness of the decision of M. M. Punchhi, J. in *Mukhtiar Singh* vs. *Smt. Krishna Gulati* (1) and thus had ordered the appeal to be heard by a Division Bench. This is how this appeal is before us. Before we proceed to consider the law point, it would be necessary to state the brief facts.

(2) On 24th July, 1984 Narinderpal Singh claimant along with his brother Surinderpal Singh was travelling by Bus No. PUR 4401 owned by the Punjab Roadways. He was occupying the seat on the right side of the bus near the glass window. As about 6.45 P.M. when the bus reached near village Sarhana on Morinda-Chamkaur Sahib road, a truck No. PUR 5985 coming from Morinda side collided against the bus. The truck was being driven by Hazara Singh respondent No. 5 and the bus by Prem Singh respondent No. 3. According to the allegations made by the claimant the accident was the result of rash and negligent driving by both the drivers. The claimant's right arm got crushed in the accident. He remained under treatment as an indoor patient from 25th July, 1984 to 28th August, 1984 and because of the injury his arm had to be amputated which rendered him disable permanently.

(3) The appellant filed claim application against both the drivers, owners of the bus and truck and since the truck was insured with the New India Assurance Company, it was also impleaded as one of the respondents.

(4) The State of Punjab pleaded that the accident took place because of the negligence of the truck driver; whereas the truck driver denied his negligence and pleaded that the accident was the result of rash and negligent driving by the bus driver.

---

(1) 1986 (1) P.L.R. 600.

(5) Bus driver and owner of the truck had not put in appearance in spite of service and hence were proceeded against *ex parte.*

(6) On the contest of the parties, the following issues were framed:

1. Whether the accident in question in which the injuries were received by the claimant petitioner Narinderpal Singh, was the result of rash and negligent driving of bus No. PUR 4401 by its driver Prem Singh, respondent No. 3 and truck No. PUR 5985 by its driver Hazara Singh respondent No. 5 ? OPP.

2. Whether the claimant-petitioner is entitled to any compensation ? If so, to what amount and from whom ? OPP.

3. Relief.

(7) On the evidence led in the case, the Tribunal held that the accident was the result of rash and negligent driving of both the drivers and consequently decided issue No. 1 in favour of the claimant and against the respondents. As regards the compensation, the Tribunal awarded Rs. 75,000 to the claimant. Rs. 50,000 for loss of income, Rs. 15,000 for special damages on account of the amputation of arm, Rs. 5,000 for pain and suffering and Rs. 5,000 towards the expenditure incurred on treatment. Interest at the rate of 12 *per cent* per annum from the date of filing of the petition till realization thereof was also awarded by the Tribunal. The Tribunal below held owners of both the vehicles responsible to pay the amount jointly and severally on account of the composite liability.

(8) Against the award of the Tribunal, FAO No. 436 of 1986 has been filed by the claimant, FAO No. 569 has been filed by the owner, driver and the Insurance Company of the truck and FAO No. 495 of 1986 has been filed by the State of Punjab. Since they arise out of the same accident and common judgment of the Tribunal, they are being disposed of by this common judgment.

(9) When there is collision of two vehicles, in law either it will be a case of negligence of driver of one of the vehicles or of both the vehicles. When it is a case of negligence of both the drivers, it will be either a case of contributory negligence or composite negligence. Composite negligence is also termed as joint tortfeasors whose liability is joint and several.

(10) When the claimant or plaintiff is driver of one of the vehicles involved in the accident and is found to have contributed towards negligence, it is called contributory negligence and the Tribunal or the Court has to apportion the liability so that for the negligence contributed to the driver of the other vehicle, the claimant or the plaintiff is awarded damages.

(11) When the claimant or plaintiff is third party to a collision between the two vehicles and if Tribunal or Court finds drivers of both the vehicles negligent, it is termed as composite negligence, that is, of joint tortfeasors and the liability of the owners of both the vehicles is joint and several. To this extent there appears to be no problem.

(12) The Admitting Bench entertained doubts when argument was raised that in terms of *Mukhtiar Singh's case* (supra) it was the duty of the Tribunal to apportion the liability between the two drivers. This is precisely the point we will be dealing with on the basis of the Statute and the decided cases.

(13) First referring to the Motor Vehicles Act, 1939 (for short 'the Act'), section 110-B whereof clearly provides that it shall be the duty of the Tribunal to make an award :

> "determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid; and in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be."

The aforesaid quotation is the reproduction of later part of Section 110-B of the Act. The quotation enjoins upon the Tribunal not only to determine the amount of compensation payable but also the amount, which is payable by the Insurance Company or owner or driver of the vehicle, or by all or any of them. This means the Tribunal's jurisdiction extends to awarding the amount against all, some or one of the respondents, and if this is to be done, the Tribunal has to apply its mind on all these matters and if there are two vehicles involved and their drivers are found negligent, then the Tribunal has to apportion the amount and has to see how much would be the liability of the driver and owner of the one vehicle and that of the other. Assuming for the sake of argument that

both the vehicles are insured then the Tribunal has to apportion the liability between the two Insurance Companies. In a given case it is possible that one vehicle may be insured and the other may belong to Government or a private person, but not insured, then also the Tribunal has to apportion the liability so that the Insurance Company would know its liability for the insured vehicle and of the other, that is, the Government or the private owner. This is only for the purpose of *inter se* liability of the two vehicles found negligent but this determination has no effect on the claimant because in law he is entitled to recover the entire amount jointly and severally. Therefore, on a reading of the provision, it is clear that while awarding the amount in a case of composite negligence, the Tribunal can direct the payment of the entire compensation jointly and severally, but at the same time would apportion the liability between the two owners for their facility, and if both the owners or the two Insurance Companies, as the case may be, may pay the amounts to the claimant in proportion as awarded by the Tribunal, there will be no problem for the claimant. But in case, any one of the parties liable does not want to honour the award of the Tribunal, it will be open to the claimant to recover the entire amount from the other, leaving such party to claim reteable distribution from the owner of the other vehicle involved in the accident and found negligent by the Tribunal. Therefore, on the basis of the provisions of the Act mentioned above, it can safely be held that the Tribunal has the jurisdiction to apportion the liability, even in the case of the composite negligence.

(14) For further illustration of the point, we may refer to the statement of law prevalent in England, as we have borrowed the rule of tort from that country, as enshrined in the Act.

(15) For finding out, what is contributory negligence, reference may be made to paras 68 and 69 of HALSBURY'S LAWS OF ENGLAND (Fourth Edition), and for Joint Tortfeasors, reference may be made to para 77 of the aforesaid book. Relevant passage from para 69 reads as under :—

> "*The negligence must be contributory* : In order to establish contributory negligence the defendant has to prove that the plaintiff's negligence was a cause of the harm which he has suffered in consequence of the defendant's negligence. The question is not who had the last opportunity of avoiding the mischief but whose act caused the

harm. The question must be dealt with broadly and upon commonsense principles. Where a clear line can be drawn, the subsequent negligence is the only one to be considered; however, there are cases in which the two acts come so closely together, and the second act of negligence is so much mixed up with the state of things brought about by the first act, that the person secondly negligent might invoke the prior negligence as being part of the cause of the damage so as to make it a case of apportionment. The test is whether the plaintiff in the ordinary plain commonsense of the business contributed to the damage."

The relevant part of para 77 also deserves to be reproduced:—

".....Where a plaintiff sues two or more defendants who are liable on account of their negligent conduct in respect of the same damage, he will be awarded his entire damages against each defendant. Although the Court has power to apportion the damages as between the defendants, and frequently does so it has power to apportion them as against the plaintiff,....."

(16) As regards law in America, reference may be made to 65, Corpus Juris Secundum 'Negligence' para 116 which also deals with contributory negligence. According to this para there are two essential elements in contributory negligence:—

(1) Negligence for which the plaintiff is responsible;

(2) Casual connection between such negligence and the injury complained of.

(17) The matter relating to Joint and Several liability is discussed in para 102 of the aforesaid book, under the head 'Negligence'. The relevant passage for our purpose is as under:—

"While, in order to create a joint liability for an injury, the negligent acts of the parties sought to be charged must have concurred in producing it, where there is the necessary concurrence in producing the effect or result, or, in other words, where the negligence of two or more persons

naturally and directly combines and co-operates to produce a single, indivisible injury to a third person, the rule that the persons guilty of the negligence are jointly and separately liable applies not only where the tortfeasors are acting together, or there is a common design or purpose, or concert of action, or a breach of a common duty owing by them, but also where their acts of negligence are separate and independent, there is no voluntary, intentional concert of action between or among them, no community of design, or no common duty resting on them, and the liability of each is grounded on an independent theory. Joint and several liability is not defeated by the mere fact the negligence of one preceded that of the other in point of time, or by the fact that the accident would not have occurred but for the joint or concurrent negligence of the other.....".

(18) Referring to the decided cases cited before us by both the sides we find that the matter of contributory negligence and joint tortfeasors was not gone into in depth and one or the other word was used in the judgment while apportioning the compensation. Therefore, we do not consider it necessary to discuss in detail the decided cases cited before us except *Mukhtiar Singh's case* (supra).

(19) Having considered the provision of Section 110-B of the Act, quoted above, view expressed in Halsbury's Laws of England, view expressed in Corpus Juris Secundum and the decided cases, we find it clear that it is the duty of the Tribunal to apportion the compensation even in the case of joint and several liability, without which it would not be a complete determination by it. Moreover, when exclusive jurisdiction has been given to the Tribunal, it would not be proper to say that *inter se* between the two joint tortfeasers there should be fresh litigation before a civil Court in separate proceedings and that Court should decide the dispute. It is another cardinal rule of jurisprudence that multiplicity of proceedings on the same matter should be avoided and unless it is expressly provided or is the necessary intendment, the interpretation should be such that a Tribunal of exclusive jurisdiction should finally decide the dispute on all matters between them and should not leave any part to be gone into in a separate suit before another Court of law. As has been noticed above, it is the expressed provision in Section 110-B of the Act that *inter se* dispute between the joint tortfeasors has also to

be decided, whether all of them are liable and to what extent, and if not then which of them and for how much amount. Therefore, we hold that *Mukhtiar Singh's case* (supra) is correctly decided and the learned Judge was right in apportioning the compensation between the two joint tortfeasors by holding that their liability would be joint and several so far as the claimant is concerned.

(20) Now we have to advert to the facts of the present case as to whether it will be a case of contributory negligence or of the other kind. Since the claimant is asking for compensation from the owners of the two vehicles for the injury caused to him due to the negligent driving of their respective drivers, it would not be a case of contributory negligence as there is no allegation against the claimant about it. For bringing the case in the second category we have to advert to the facts of the case whether both the drivers were negligent or one of them. In the present case, there was a head on collision on a highway and none of the drivers has been able to exclude his involvement or to show that he was negligent in some degree less than the other. In fact this matter could not be seriously disputed before us. Accordingly we hold that both the drivers were equally negligent and their liability would also be equal.

(21) Coming to the quantum of compensation, for the amputation of right arm we are of the opinion that the award of total amount of Rs. 75,000 on different counts is reasonable on the facts of this case and neither reduction nor enhancement is called for. The amount of Rs. 75,000 is apportioned between the State of Punjab and the New India Assurance Co. Ltd. in the ratio of 50:50 (half and half), and each one of them would be liable to pay interest at the rate of 12 per cent per annum as awarded by the Tribunal. Since the entire amount has been recovered by the claimant from the Insurance Company because the liability of the Insurance Company and the State of Punjab was joint and several, the Insurance Company would be entitled to reimbursement of half of the amount and interest thereon from the State of Punjab.

(22) Consequently, all the three appeals stand disposed of in the aforesaid terms with no order as to costs.

R.N.R.