Karnataka High Court Karnataka State Road Transport ... vs Reny Mammen And Others on 31 August, 1990 Equivalent citations: 1993 77 CompCas 266 Kar Author: R Jois Bench: M R Jois, S R Murthy JUDGMENT Rama Jois, J. 1. In these appeals presented under section 110D of the Motor Vehicles Act, 1939 ("the Act" for short), against a common award on three claim petitions presented under section 110A of the Act, read with rule 343 of the Karnataka Motor Vehicles Rules, 1963 ("the Rules" for short), the following important questions of law arise for consideration : 2. In the case of a claim for compensation for death or injury caused by a motor accident on account of the rash and negligent driving of more than one motor vehicle by the drivers of those vehicles : (A) Whether or not the owners of all such vehicles are several tortfeasors in that each owner is a separate tortfeasor and consequently the liability of each of the owners of the vehicles is separate and distinct ? and whether or not there should be apportionment of the amount of compensation awarded in proportion to the negligence of each of the drivers as found by the Motor Accidents Claims Tribunal ? (B) Whether section 110B of the Act authorises and requires the Motor Accidents Claims Tribunal to make apportionment of the compensation as against each of the owners of such vehicles in proportion to the negligence of the driver of each of the vehicles ? 3. Further, the subsidiary questions which arise for consideration are : 4. Whether in a claim petition filed under section 110A of the Act claiming compensation for death caused or injury inflicted as a result of a motor accident in which more than one vehicle is involved : (A) It is not obligatory for the claimant to furnish the particulars of all the vehicles involved in the accident as also the names of owners and insurers of all the vehicles in Form No. 82 prescribed under the Rules ? (B) It is not obligatory for the Tribunal to direct issue of notice to the owners and insurers of all the vehicles in view of rule 346 of the Rules ? (C) Whether the period of limitation of six months prescribed under sub-section (3) of section 110A of the Act operates as a limitation for issuing notice to the owner and insurer or driver of a vehicle whose particulars were not furnished in the application filed in time and came to be furnished subsequently after the expiry of the period of six months ? 5. The brief facts of the cases are these : Three claim petitions were presented by three persons, namely, the respondents in each of the appeals on the following allegations : That, on July 27, 1984, at about 7 p.m. on Tumkur Road in the city of Bangalore, near Goverdhan talkies, a motor accident took place on account of the rash and negligent driving of a bus bearing registration No. MEF 827, belonging to the appellant as a result of which the claimants suffered injuries. Their claim petitions were registered as MVC Nos. 20 of 1985, 70 of 1985 and 125 of 1985. The claimant in MVC 20 of 1985 was a pillion rider on TVS 50 with his friend, Devendra M. Dube. According to the claimant, they were going from Peenya to Yeshwantpur and the TVS rider was going very slowly on the extreme left side of the road. The claimant in MVC No. 70 of 1985 was also a pillion rider with one Sri Srinivasa Balaram, who was the rider of Vijay Super scooter MEJ 2790 and was proceeding towards Yeshwantpur on Peenya road. The claimant in MVC No. 124 of 1985 was the rider of the said Vijay Super scooter. He was also proceeding to Yeshwantpur from Peenya. While the

claimants were going towards Yeshwantpur, the bus belonging to the appellant-corporation, driven by its driver, M. Krishna, dashed against their vehicles and as a result the claimants sustained injuries. The claimant in MVC No. 20 of 1985 claimed a compensation of Rs. 1,55,000, whereas the other two claimants claimed compensation of Rs. 50,000 each. 6. On the service of notice of the claim petition on the appellant, an objection statement was filed on behalf of the appellant-corporation. In the statement, at paragraph 7 the appellant stated thus : "This respondent submits that, on July 27, 1984, vehicle No. MEF 827 was plying on route Bangalore to Holenarasipur. The same was being driven by the first respondent at a very slow speed with utmost care can caution observing all the traffic rules and regulations in force. At about 6.30 p.m. when the bus was passing on Tumkur Road near Kirloskar factory at Yeshwanthpur, the first respondent observed a lorry bearing No. CNS 4319 coming from Nelamangala side at a very high speed and being driven by its driver in a rash and negligent manner. The driver of the said lorry suddenly turned the same towards right side, i.e., towards regulated market without giving any traffic signals or indications. On observing this the first respondent applied the brakes to avoid any collision and stopped the bus. A scooter No. MEJ 2790 which was coming from the opposite direction at a high speed and in a negligent manner hit the right side front portion of the bus and fell down and sustained injuries." 7. In view of the facts and circumstances explained above, the alleged accident is not due to the rash and negligent driving of the bus MEF 827 by the first respondent. The same is purely on account of the carelessness and negligent driving of the vehicle No. MEJ 2790 by its driver. The petitioner has, in his anxiety to get compensation, come forward with misleading statement of facts. The petitioner ought to have impleaded driver, owner and the insurer of vehicle No. MEJ 2790. As such the petition is bad for misjoinder and non-joinder of parties." 8. Though the pleading in the aforesaid paragraph is not accurately drafted, a reading of the same makes it clear that it was the specific case of the appellant that the driver of the bus was not negligent but the accident occurred on account of the rash and negligent driving of the lorry and it was so understood by the parties and the Tribunal also. Even after the plea that the driver of the lorry was responsible for the accident was taken, no steps were taken by the claimant to furnish the name of the driver and the owner of the lorry and its insurer. The Tribunal also failed to ask the parties to furnish those particulars and to issue notices to them. 9. On the basis of the pleadings, issues were framed by the Tribunal. One common issue for consideration in all the three claim petitions was : 10. Whether the petitioner proved that the accident occurred due to the rash and negligent driving of the bus bearing registration No. MEF 827 by its driver ? 11. As stated earlier, whereas according to the plea of the claimants, the accident occurred due to the rash and negligent driving of the bus belonging to the corporation, inter alia, it was the plea of the appellant that the accident occurred on account of the rash and negligent driving of the lorry bearing registration No. CNS 4319. The Tribunal on consideration of the entire evidence adduced by the parties, recorded a finding to the effect that the accident occurred on account of composite negligence, for which both the lorry driver and the KSRTC

bus driver were equally responsible. The relevant portion of the award reads : "Of course it is elicited in the cross-examination that the driver of the KSRTC bus has been prosecuted by the police. Exhibit P-10 is the sketch. Even in the sketch, the course of the bus and the course of the lorry are shown. It cannot be denied that the lorry did not take a right turn. It appears from this sketch that because the lorry suddenly took a right turn, the KSRTC bus might have gone to the wrong side. The dearth in the evidence is that from what distance the driver of the KSRTC bus could see the lorry taking the right turn all of a sudden. In view of the evidence of the petitioners and in view of the contents of exhibit P-11, it can be seen that one driver alone is not responsible for this accident. Scanning the evidence, it can be seen that the alleged accident took place on account of rash and negligent driving of both the drivers and hence, as far as the petitioners are concerned, it is the composite negligence. In other words, the alleged accident was on account of composite negligence for which both the lorry driver and the KSRTC bus driver are equally responsible. Hence the issues are answered accordingly. ... Having regard to the finding that the accident was due to composite negligence of both the driver of the bus and the lorry and in the event the owner of the bus alone satisfies the claim of the petitioner, it is open to it (respondent No. 2) to work out its rights as against the owner of the lorry and the insurance company in separate proceedings for contribution, if so desired .... Since it is a composite negligence, the petitioners are at liberty to recover the amount of compensation from the owner and the insurer of the bus bearing No. MEF 827 and from the owner, driver and the insurer of the lorry bearing No. CNS 4319 or from either of them as the liability is joint and several. In the event the owner of the bus alone satisfies the claim of the petitioners, it is open to it (respondent No. 2) to work out its rights as against the owner of the lorry and the insurance company in separate proceedings for contribution, if so desired." 12. Thereafter, the Tribunal proceeded to compute the compensation which should be awarded and made the award. 13. Thus, it may be seen that the Tribunal recorded a finding that the accident occurred on account of the composite negligence of the driver of the bus belonging to the corporation and the driver of the lorry CNS 4319. However, after fixing the quantum of compensation, the Tribunal did not make an apportionment of the liability between the appellant and the owner of the lorry. It passed an award for the entire amount against the appellant-corporation. The Tribunal could not also apportion the liability for the reason that the owner of the lorry CNS 4319 was not made a party to the claim petition and no notice was issued to the owner of the lorry by the Tribunal under rule 346 of the Rules. Aggrieved by the order of the Tribunal, the appellant has presented these appeals. 14. Sri K. Balakrishna, learned counsel for the corporation submitted that though the appellant was aggrieved not only by the finding that negligence of the driver of the appellant's bus and of the driver of the lorry was in equal proportion as also against the quantum of compensation, the main grievance of the appellant in these appeals was that the Tribunal having recorded a finding that the negligence of the driver of the bus belonging to the appellant and the driver of the lorry CNS 4319 which resulted in the accident was in equal proportion, there

was no justification to foist the entire liability on the corporation leaving the appellant in the lurch by making an observation to the effect that the appellant was at liberty to recover 50 per cent of the amount awarded from the owner of the lorry which the corporation could do only by filing a civil suit paying ad valorem court fee, which might also be held to be barred by section 110F of the Act, and further the lorry owner is bound to take the stand that he is not bound by a finding or award to which he was not a party. 15. Learned counsel further submitted that, in situation like this where there was a specific plea by the appellant that the accident occurred on account of the rash and negligent driving of another vehicle, it was obligatory on the part of the claimants to make an application for impleading the owner of the lorry also as a respondent or in the alternative it was the duty of the Tribunal to have issued notice to the owner of the lorry and further having regard to the provisions contained in section 110B of the Act, the Tribunal ought to have fixed the liability to pay compensation between the appellant and the owner of the lorry in the ratio of 50 : 50 having regard to the finding that the accident occurred on account of the negligence of the two drivers in equal proportion. In this situation, learned counsel maintained that the liability of each of the drivers/owners was separate and distinct and not joint as they are separate and distinct tortfeasors. 16. As against the above contention, it is contended by learned counsel for the claimants that, in cases where more than one vehicle was involved in an accident, the liability of the owners was joint and several as they are joint tortfeasors and it was purely at the choice or discretion of the claimants to file a claim petition only against one of the drivers and/or owners of the vehicle by furnishing the particulars of only one of the vehicles involved in the accident and secure the entire relief against the owner of that vehicle and the only course open to such owner who is made a respondent in the claim petition, is to file a separate suit against the owner and/or driver involved in the accident for contribution. 17. Before proceeding to consider the contentions, it is necessary to make a brief survey of the important provisions of Chapter VIII of the Act relating to compulsory insuring of motor vehicles and providing for constitution of Motor Accidents Claims Tribunals and the special jurisdiction conferred on the Tribunal. Section 94 of the Act makes it obligatory for the owner of any motor vehicle using it in a public place to take out insurance against third party risk. Section 95 of the Act prescribes the requirement of policies and limits of liability. Inter alia, it provides that the insurer issuing the policy must insure the person or classes of persons specified in the policy to the extent specified in clauses (a) to (d) of sub-section (2) of the said provision. Sub-section (5) of section 95 limits the liability of the insurer to the extent it is covered by the policy. Section 96 of the Act imposes a duty on insurers to satisfy judgments against persons insured in respect of third party risks, and sub-section (2) thereof specifies the defences available to an insurer for avoiding the liability. Section 103 of the Act prescribes the effect of a certificate of insurance. Section 110 of the Act provides for the constitution of Claims Tribunals for adjudicating upon for compensation in respect of accidents involving the death of or bodily injury to persons arising out of the use of motor vehicles or damage to any property of

a third party so arising. According to the proviso to section 110, a claimant has the choice of approaching a civil court only in respect of compensation for damage to property, if the claim exceeds Rs. 2,000. Section 110A of the Act prescribes the procedure for making an application for compensation before the Tribunal. Section 110B of the Act provides for the making of the award by the Claims Tribunal. According to this section, if an application under section 110A is made, the Tribunal has to inquire into the matter and an award has to be made in favour of the claimant, if he were to make out a case for the award of compensation. Section 110C of the Act prescribes the procedure and powers of the Claims Tribunal. Section 110D of the Act provides for an appeal against the awards made by the Accidents Claims Tribunal. Section 110F bars the jurisdiction of civil courts to entertain any question which falls within the jurisdiction of the Tribunal. 18. Under the scheme of these provisions, compensation could be claimed by an injured person or by the legal representatives of a person who died as a result of a motor accident on the ground of fault in that the accident was as a result of rash and negligent driving of the vehicle by its driver. On proving that it was so only, the claimant would become entitled to the compensation. As regards the insurance company, the liability to pay compensation would arise only if the insurance company had issued a policy which was in force on the date of accident and if, under the policy, the particular risk was covered and its liability would also be subject to the maximum limits, if any, up to which the risk is covered by the policy in respect of any particular type or class of vehicle. By Act 47 of 1982, Chapter VII-A consisting of sections 92A to 92D were incorporated into the Act creating for the first time "no fault liability" to pay compensation in respect of death or permanent disablement caused by a motor accident to the extent indicated in section 92A. 19. For the questions arising for consideration in these cases, section 110B of the Act which regulates the making of the award is relevant. It may be seen from the language of that section that the Tribunal is required to 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 language of the section indicates that it is the duty of the Tribunal to fix the liability of every owner of the vehicle involved in the accident if the fault, i.e., negligence on the part of the driver concerned is proved and on the insurance company with which the vehicle is insured and also in respect of any other person who is found liable to pay the compensation. 20. There can be no doubt that when an owner of the vehicle is found liable to pay the compensation, the insurance company with which the vehicle is insured would automatically become liable to pay the amount to the extent of the risk covered by the insurance policy. In fact, the whole object of insuring a motor vehicle with an insurance company is that, in the event of the owner becoming liable to pay any compensation as a result of the accident, such liability has to be undertaken and met by the insurance company subject of course of the maximum limit of liability under the policy concerned. Therefore, there is always a joint and several liability on the part of the owner of the vehicle and its insurer and the Tribunal, therefore, has to fix the liability on both, subject to the condition that in cases where the liability

of the insurance company is limited, the Tribunal is bound to fix the liability of the insurance company only to the extent of its liability. Up to this extent, there is no dispute. 21. Similarly, when the driver of the vehicle is found to be negligent and as a result of that the accident occurred giving rise to the claim, the driver is liable to pay the compensation and, on the principle of vicarious liability in tort, the owner also becomes liable and their liability is joint and several and, therefore, the Tribunal has to fix the liability jointly and severally on the driver and the owner of the vehicle concerned. There is no controversy on this point also. 22. But the question is, both having regard to the fact that compensation awardable is based on fault liability and also having regard to section 110B of the Act which requires the Tribunal to specify the amount of compensation payable by every person found liable to pay the compensation, is it not the duty of the Tribunal to specify and fix the extent of liability of each of the drivers and the owners of the vehicles involved in an accident which gave rise to the claim petition and to make an award accordingly ? 23. There have been a large number of decisions rendered by various High Courts in cases in which the claims for compensation arose out of rash and negligent driving of more than one motor vehicle. They can be divided into three classes : (1) The decisions in which joint liability is fixed without fixing the proportion of negligence or apportioning the liability. (2) The decisions in which the view taken is that, in such cases, proportion of negligence should be fixed but there should be no apportionment of compensation and the claimant has the choice of recovering the entire compensation from the one or the other. (3) The decisions in which both proportion of negligence as also apportionment of liability are made. 24. I. The cases in which joint and several liability is fixed without fixing the proportion of negligence are : Karnataka State Road Transport Corporation v. Krishnan [1981] ACJ 273 (Kar), Rama Bai v. H. Mukunda Kamath [1986] ACJ 561 (Kar), United India Insurance Co. Ltd. v. A. Premkumaran [1988] ACJ 597; [1984] 66 Comp Cas 818 (Ker), Sampat Kunwar Bai v. Gurmeet Singh [1988] ACJ 342 (Raj), U.P. State Road Transport Corporation v. Bittan Devi [1988] ACJ 291 (All), National Insurance Co. Ltd. v. Kastoori Devi [1988] ACJ 8 (Raj), Raghib Nasim v. Naseem Ahmad [1986] 60 Comp Cas 561; [1986] ACJ 405 (All), Karunakar Pradhan v. Sarojini Mishra [1980] ACJ 121 (Orissa) and United India Fire and General Insurance Co. Ltd. v. U. E. Prasad [1986] 60 Comp Cas 700; [1985] ACJ 280 (Kar). II. The cases in which the view taken is that in such cases proportion of negligence between the drivers should be fixed but there should be no apportionment : Inder Singh v. Haryana State [1987] ACJ 94 (P&H), Khushaliben Ashumal Variani v. Manilal Prabhudas Chauhan [1988] ACJ 133 (Guj), Lakshmamma v. C. Das [1985] 58 Comp Cas 191; [1985] ACJ 199 (Kar) and Narain Devi v. Swaran Singh [1989] ACJ 1118 (Delhi). III. The cases in which apportionment of compensation has been made as between owner of the vehicles involved in the accident : Madras Motor and General Insurance Co. Ltd. v. Nanjamma, , New India Assurance Co. Ltd. v. Angoori Devi [1987] ACJ 942 (Delhi), Secretary, Ministry of Communication v. Amar Kaur [1989] ACJ 82 (P & H) and Bhuban Chandra Dutta Gupta v. Orissa State Road Transport Corporation [1985] ACJ 228 (Orissa). 25. The arguments of

learned counsel for the appellants give rise to the following two questions : (1) Is it not correct to say that the drivers of those vehicles who were responsible for the accident and on the principle of vicarious liability in torts of the master, the owners of all those vehicles are several tortfeasors and, therefore, their liability to pay compensation is in proportion to the negligence of each of the drivers ? and (2) Whether or not section 110B of the Act makes it the duty of the Tribunal not only to fix the proportion of negligence but also to apportion the liability as between/among the drivers, owners and insurers of the vehicles, the use of which resulted in the accident and make an award accordingly ? 26. It may be seen from the decisions cited in the preceding paragraph that except in the case of Nanjamma, , decided by a Division Bench of this court, the common basis on which all those cases were decided was that, in the case of joint tortfeasors, the liability was joint and several. In fact, this position in law is too well settled. The decisions, however, proceeded on the basis that when an accident occurs as a result of rash and negligent driving of more than one motor vehicle, the drivers and the owners of all the vehicles are joint tortfeasors and, therefore, their liability to pay compensation is joint and several. Even so, in the second category of cases, the proportion of negligence was fixed, though apportionment of compensation was not made. In the third category of cases, even the apportionment was made. In some of the cases, the distinction between contributory negligence and joint tortfeasors was pointed out of the effect that contributory negligence means the negligence of the injured/claimant and of the tortfeasor together resulted in the accident and, therefore, the liability of the tortfeasor gets reduced in proportion to the negligence of the claimant, whereas, in the case of joint tortfeasors, the liability of each is total, joint and several. But in none of these cases, as pointed out by learned counsel, the two precise questions of law raised in these appeals have been considered. In the case of Nanjamma, , the earliest Division Bench decision of this court, though there is no specific discussion and decision on the question whether, in such cases, the drivers/owners of each of the vehicles are several tortfeasors, the view taken that the apportionment must be made shows that such was the basis to which we shall refer later. As far as the second question is concerned, it has been considered by the Punjab and Haryana High Court in the case of Narinder Pal Singh v. Punjab State , in which the view taken is that even though in such cases the liability of the owners and insurers of the vehicles the use of which resulted in the accident which gave rise to the application under section 110A claiming compensation is joint and several it is obligatory for the Tribunal to apportion the liability between them so that if one of them pays the entire amount, he could recover the amount payable by the other from him. To a large extent, this decision supports the contention of the appellant on the second question to which we shall refer in great detail later while considering the second question. 27. We shall, in the first instance, proceed to consider the first question. It is one of the fundamental principles of the law of torts that persons are not joint tortfeasors merely because their independent wrongful acts have resulted in one damnum (See The Law of Torts, Ratanlal and Dhirajlal, 21st edition, page 17). In Winfield and Jolowicz on Tort, 13th edition, at page 591, the distinction

between joint tortfeasors and several tortfeasors is stated thus : "At common law, tortfeasors liable in respect of the same damage were divided into 'joint' tortfeasors and 'several' tortfeasors. This distinction, formerly of importance, has been largely eroded by statute, as we shall see in a moment, but it remains of significance for one purpose and some account of it is necessary. Persons are said to be joint tortfeasors when their separate shares in the commission of the tort are done in furtherance of a common design. So, in Brooke v. Bool [1928] 2 KB 578, where two men searching for a gas leak each applied a naked light to a gas pipe in turn and one of them caused an explosion, they were held to be joint tortfeasors but where two ships collided because of the independent acts of negligence of each of them, and one of them, without further negligence, collided with a third, it was held that they were several tortfeasors, whose acts combined to produce a single harm, because there was no community of design." 28. There is an useful elucidation of the matter in Charlesworth on Negligence fifth edition, by R. A. Percy at page 531. The relevant portion reads : "Joint tortfeasors. 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 (Brunsden v. Humphrey [1884] 14 QB 141, per Bowen L.J. at page 147, quoting from older authorities). As Sargeant L.J. expressed it :"There must be a concurrence in the act or acts causing damage not merely a coincidence of separate acts which by their conjoined effect causes damage (The Koursk [1924] P. 140, 159). 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 (See Brooke v. Bool [1928] 2 KB 578, at pages 585, 586 per Salter J.). An almost classic example of this latter situation is to be found in the facts of Brooke v. Bool [1928] 2 KB 578, where the defendant landlord went to investigate the smell of gas in the plaintiff's lock-up shop, taking his lodger with him to assist him in tracing the leaking pipe. The elderly defendant examined the lower part of the gas pipe with a naked light whilst the younger man climbed on top of the shop's counter with his naked light and was commencing to examine the upper part of the gas pipe when a severe explosion occurred. The defendant was held liable for the negligent acts of his lodger to the plaintiff shopkeeper for the loss and damage she had suffered (Brooke v. Bool [1928] 2 KB 578, at pages 585, 586 per Salter J.) On the other hand, wrongdoers will not be held jointly liable for a tort where each is responsible for a different injuria although the two injuriae happen to produce the same damnum (Koursk [1924] P. 140 at page 156); they can only be jointly liable where the injuriae as well as the damnum are the same (King v. Sadler [1969] 114 SJ 192). Many cases can be found in which the same damage is caused by independent and separate wrongful acts of several persons, for example, where a plaintiff, a passenger travelling in a motor car, sustains single damage as a result of the combined negligence of two or more motor car drivers, who are not engaged in any common design, such as racing

each other along the road (Koursk [1924] P. 140 at page 159; Drinkwater v. Kimber [1952] 2 QB 281 per Morris L.J. at page 292). 29. If we apply the above principle to the case of a motor accident which takes place on account of rash and negligent driving of more than one vehicle by the drivers of the respective vehicle, causing death of or injury to a person it would be a case of different injuria, i.e., tortious act of each of the drivers producing the same damnum, i.e., damage. It is a case of coincidence of tortious acts or negligence of more than one person resulting in a single damage to a third party which gives rise to the claim for compensation. They would be several tortfeasors, for, there was no concurrence or community of design among them. To put it differently, the damage caused was as a result of collision and not coalition. Therefore, each one of them is a separate and distinct tortfeasor answerable for damages to the extent of his negligence. A few illustrations may be given to clearly indicate when more than more person become joint tortfeasors : (i) In respect of claims for damages for defamation (libel) against an author of a book or article who writes it and a printer who printed it and a publisher who published it, all of them acting in a concerted manner, they are all joint tortfeasors. (ii) A case in which two or more neighbouring factory owners have jointly constructed a tank for discharging the effluent released from their respective factories and on account of breach of the tank so constructed crops in the adjoining field of another get damaged, the owners of the factories can be regarded as joint tortfeasors in such a case as the cause for the injury is their joint act and negligence. (iii) Take a case where owners of two neighbouring houses agree to cut and remove an old tree standing in between their houses and entrust the job to any person and on account of negligence of the said person, a third person moving in the street is injured by the fall of a branch of the tree on him, the owner of the two houses would be joint tortfeasors. (iv) Similar would be the position if the owners of two motor vehicles agree to participate in a motor race and, in the course of racing, an accident is caused in which both the vehicles are involved resulting in death or injury to, a third person, the owners of the two vehicles would be joint tortfeasors. In such cases it is open for the claimant to sue one of the tortfeasors or all the tortfeasors and the court also has to pass a decree which is answerable by the joint tortfeasors jointly and severally if all of them are joined as defendants in the case. Further, if an action is filed against one of the joint tortfeasors or after a decree is passed against more than one tortfeasor, the decree is executed against one of the joint tortfeasors, the course open to the joint tortfeasor who answered the liability or paid the damages is for taking action for contribution against other joint tortfeasor. Thus, it may be seen that what makes more than one person to become joint tortfeasors is the concerted or joint action on their part as a result of which injury is inflicted against an individual. Once concerted or joint action on their part is found to exist they are joint tortfeasors and their liability in law is both joint and several. 30. But is that the position in the case of a motor accident which takes places on account of rash and negligent driving of more than one vehicle by the respective drivers of the vehicle ? It is not a case of concerted or joint action on the part of the drivers/owners concerned, with consent or co-operation as between/among

them, though it results in single damage to a third party. In such a case, they are really several tortfeasors and, therefore, the liability of the drivers has to be, to the extent of negligence of each one of the drivers, and, therefore, he is answerable to the claim only to that extent and not more and the vicarious liability of his master/owner of the vehicle, if any, is also in the same proportion. The liability of one cannot be foisted on the other. 31. We receive full support for our view from the decision of Hansaria J. of the Assam High Court (as he then was) in the case of Drupad Kumar Barua v. Assam State Transport Corporation [1990] ACJ 46. The relevant portion of the same reads (page 52) : "16. The important question is whether the present was a case of causing injury to the claimant as joint tortfeasors or were the wrongdoers several tortfeasors. A reference to standard textbooks on law of torts shows that a tort is imputed to several persons as joint tortfeasors in at least three instances, vi., (1) agency, (2) vicarious liability, and (3) concerted action. For the case at hand the first two instances are not applicable. As to the third the critical element is that those participating in the commission of the tort must have acted in furtherance of a common design. To put it differently there must be 'concerted action to a common end, not merely a coincidence of separate acts which by their conjoined effect causes damage'. Broadly speaking, this means a conspiracy with all participants acting in furtherance of the wrong though it is probably not necessary that they should realise that they are committing a tort. This is how the law has been put at page 237 of Fleming's Law of Torts, 5th edition. In Salmond's Law of Torts this aspect has been dealt with at page 442 of the 17th edition. As per Salmond persons are deemed to be joint tortfeasors whenever they are responsible for the same tort, that is to say, whenever the law for any reason imputes the commission of the same wrongful act to two or more persons at once. This happens in at least three classes of cases, namely, agency, vicarious liability and concerted action, i.e., where a tort is committed in the course of a common action; a joint act is done in pursuance of a concerted purpose. For example, in Brooke v. Bool [1928] 2 KB 578, the defendant, accompanied by one Morris, entered premises occupied by the plaintiff in order to search for an escape of gas. The defendant examined a gas pipe with a naked flame. Morris followed his example and the resultant explosion damaged the premises. The defendant was held responsible for the act of Morris. Thus, in order to be joint tortfeasors there must be concurrence in the act or acts causing damage, not merely a coincidence of separate acts which by the conjoined effect causes damage. 17. In the Law of Torts by Street, four categories of joint tortfeasors have been mentioned (see page 473 of 7th edition) : (a) master and servant in those cases where the master is vicariously liable for the tort of the servant; (b) where one person instigates another to commit a tort; (c) where there is a breach of duty imposed jointly on two or more persons, e.g., two occupiers are joint tortfeasors if they are sued by a visitor for failure to take reasonable care in respect of the premises jointly occupied by them; and (d) where persons take concerted action to a common end, and in the course of executing that joint purpose, any one of them commits tort. 18. According to Street, several or separate or independent tortfeasors are of two kinds, either those whose

tortious acts combine to produce the same damage, or those whose acts cause different damage to the same plaintiff. As an illustration of the first, reference has been made to the case of Drinkwater v. Kimber [1952] 2 QB 281, where a passenger in a motor car was injured in a collision between that car and another. Morris, L.J. said that the two drivers both of whom were negligent were separate tortfeasors whose concurrent acts caused injury to the female plaintiff. Thompson v. London County Council [1899] 1 QB 840, furnished another example of tortfeasors who were not joint, but several, concurrent tortfeasors. In that case the plaintiff's house was damaged when its foundation subsided. This was caused by (1) negligent excavation by D-1, and (2) D-2, a water company, negligently allowing water to escape from their main. We, lastly, refer to Law of Torts by Winfield and Jolowicz (10th edition). The question of joint and several tortfeasors has been dealt with at pages 545-6. Joint tortfeasors are those persons when their separate shares in the commission of the tort are done in furtherance of a common design. Reference was made to Brooke v. Bool [1928] 2 KB 578. But where two ships collided with each other because of the independent acts of negligence of each of them, which were the facts in Koursk [1924] P. 140, and one of them then without further negligence collided with a third. It was held that owner of the third ship had independent cause of action against the two negligent ships. 19. The law relating to joint tortfeasors may thus be explained by stating that except in case of agency or vicarious liability or imposition of joint duty, the tortfeasors must act in furtherance of common design or concerted action to a common end to be regarded as joint tortfeasors. To give an analogy which is well-known in criminal law joint tortfeasors would be those who act as stated in section 34, Indian Penal Code, in furtherance of the common intention or in prosecution of the common object of which mention has been made in section 149, Indian Penal Code. In the present case none of the aforesaid elements is present. Two drivers cannot, therefore, be regarded as joint tortfeasors but they are in law several tortfeasors. So, for the acts of one, the other cannot be held liable jointly or severally." 32. As held in the above judgment, in order to make two or more persons joint tortfeasors, what is necessary is that they should have acted in a concerted manner or in co-operation resulting in a common damnum. It is true that the intention on the part of them to cause damage to another is unnecessary, for, in such a case it would become an offence under the penal code and for a tort, i.e., a civil wrong, intention is irrelevant. Intention to act in a particular manner on the part of more than one person, resulting in an unintended injury to a third party, makes all of them joint tortfeasors. Instead if by mere coincidence of independent acts or negligence of more than one person, damage is caused to a third person, they are several tortfeasors and their liability to third persons is several in proportion to their fault. 33. From the above conclusion, it follows that, in a motor accident resulting from rash and negligent driving of more than one vehicle, the drivers of all the vehicles are several tortfeasors whose separate and independent act or rash and negligent driving of the respective vehicles, resulted in common harm or injury and from this it logically follows that it becomes the duty of the Tribunal to record a finding regarding proportion of negligence and apportion the

compensation awarded on that basis and specify the liability of each set of the parties, namely, the driver, owner and insurer of each of the vehicles separately. 34. In our opinion, the above conclusion can be reached from another angle. The provisions contained in Chapter VIII of the Motor Vehicles Act, 1939, are specially designed to provide a cheaper and speedier remedy for deciding claims arising out of motor accidents. It is a complete code in itself and all questions arising out of a claim petition presented under section 110A of the Act have got to be decided by the Tribunal in one common proceeding. This position is placed beyond doubt by section 110F of the Act which bars the jurisdiction of the civil court and section 110, which confers exclusive jurisdiction on the Tribunal to decide all questions in respect of a claim for compensation arising out of a motor accident. As can be seen from that section, it is only in respect of a claim on the basis of damage to property arising out of an accident and when the claim exceeds Rs. 2,000 that the claimant at his choice could go to a civil court. Normally, no claimant makes that choice. Whatever that may be, barring that exception, as regards the claim for compensation for injury as also for damage to property arising out of a motor accident, the jurisdiction of the Tribunal is full, complete and unlimited and the bar of the jurisdiction of the civil court is total. In this background, let us see the wordings of section 110B of the Act which confers the power to make an award. It reads : "110B. Award of the Claims Tribunal. - On receipt of an application for compensation made under section 110A, the Claims Tribunal shall, after giving the parties an opportunity of being heard hold an inquiry into the claim or, as the case may be, each of the claims and, subject to the provisions of section 109B, may 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. Provided that where such application makes a claim for compensation under section 92A in respect of the death or permanent disablement of any person, such claim and any other claim (whether made in such application or otherwise) for compensation in respect of such death or permanent disablement shall be disposed of in accordance with the provisions of Chapter VIIA." 35. The wording of the above section is clear and unambiguous. It requires the Tribunal to fix the liability of each and every person in respect of the payment of compensation to a person injured or to the legal representatives of the person who died in an accident. Therefore, the Tribunal is under a plain duty to apportion the liability between the drivers, owners and insurers of each of the vehicles involved in an accident in cases in which more than one vehicle caused the accident. If we were to allow the method adopted in this case, the resultant position would be that the Corporation, notwithstanding the finding that the negligence of its driver was only 50 per cent. would be foisted with the entire liability to pay the compensation. Learned counsel for the respondents frankly submitted that that would undoubtedly be the position but they submitted that the corporation could file a civil suit for recovering 50 per cent. of the amount of compensation paid by

it to the claimants/respondents from the lorry owner which they have to do by paying ad valorem court fee. We are of the view that such an unjust result is not contemplated by the provisions of the act. Further, as pointed out by learned counsel for the appellant, in view of section 110F of the Act, the civil court has no jurisdiction to entertain the question relating to apportionment of compensation which depends upon the proportion of the negligence which are questions squarely falling within the jurisdiction of the Tribunal. 36. Regarding the scope of section 110B of the Act, there is the decision of a Division Bench of the Punjab and Haryana High Court in Narinderpal Singh v. Punjab State . In the said decision, though in a case in which the drivers of more than one motor vehicle on account of their rash and negligent driving of their respective vehicles caused an accident, giving rise to a claim for compensation, it was held that they were joint tortfeasors, and their liability was joint and several, as regards the power and duty of the Tribunal under section 110B of the Act, the Division Bench held thus. The relevant part of the judgment reads (at page 515) : "First referring to the Motor Vehicles Act, 1939 (for short 'the Act'), section 110B 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 the latter part of section 110B 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 extents 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 those 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 the 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, 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 rateable 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 composite negligence." At page 518 : "Having considered the provisions of section 110B of the Act, quoted above, the view expressed in the Halsbury's Laws of England, the view expressed in the 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 tortfeasors there should be fresh litigation before a civil court in separate proceedings and that the 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 the parties and should not leave any part to be gone into a separate suit before another court of law. As has been noticed above it is the express provision in section 110B 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, if so and if not then which of them and for how much amount. Therefore, we hold that Mukhtiar Singh's case [1987] 2 ACJ 961, 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. 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, namely, whether both the drivers were negligent or only one of them. In the present case, there was a head-on collision on a highway and neither 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." 37. We are in respectful agreement as to the scope and purpose of section 110B of the Act, though we have preferred to take the view that, in such a case, the drivers of the vehicles involved are several tortfeasors. According to the above view, even on the basis that they are joint tortfeasors, section 110B mandates the Tribunal not only to fix the proportion of negligence but also to apportion the compensation awarded. Further, it is necessary to note that the provisions in Chapter VIII

of the Act and in particular sections 110A and 110B are not merely procedural provisions meant to enforce the pre-existing substantive law relating to claims for compensation for injury caused by a motor accident, but they also incorporate substantive provisions which creates new rights, obligations, powers and remedies as held by the Supreme court in Gujarat State Road Transport Corporation v. Ramanbhai Prabhatbhai . The relevant portion of the judgment of Venkataramaiah J. (as he then was) reads (at p. 623 of 62 Comp Cas) : "These provisions are not merely procedural provisions. They sub-stantively affect the rights of the parties. As the right of action created by the Fatal Accidents Act, 1855, was 'new in its species, new in its quality, new in its principles, in every way new' the right given to the legal representatives under the Act to file an application for compensation for death due to a motor vehicle accident is equally new and an enlarged one. This new right cannot be hedged in by all the limitations of an action under the Fatal Accidents Act, 1855. New situations and new dangers require new strategies and new remedies." 38. Therefore, in our view, having regard to the real scope of the power of the Tribunal, the correct view to be taken is that the Tribunal should award the compensation against each set of drivers, owners and insurers separately, particularly in view of the bar to the jurisdiction of the civil courts under section 110F of the Act. 39. In fact, as early as in 1977, in the case of the Madras Motor and General Insurance Co. v. Nanjamma, , in a similar case, this court held that apportionment as between the owners of two vehicles the use of which caused an accident should be made. The relevant portion of the judgment reads (page 48) : "We hold that the six passengers who died on account of the injuries sustained by them at the time of the incident are entitled to claim compensation in equal proportions from the owner, driver and the insurer of the car and from the owner, driver and the insurer of the lorry, in the circumstances of the case. At page 49 : The insurer of the lorry, the Madras Motor and General Insurance Company Limited, and the insurer of the car, the New India Assurance Company Limited, shall pay the amounts payable to the claimants equally." 40. The above decision supports the construction of section 110B as requiring the Tribunal to apportion and specify the compensation payable by each of the owners of the vehicles the use of which caused the accident. 41. We find no substance in the contention advanced by learned counsel for the respondents that, in such a case, the claimants have the choice of choosing one of the owners of the vehicles which caused the accident from whom he would like to recover the compensation by making an application under section 110A of the Act. In our opinion, this is impermissible under the scheme of Chapter VIII of the Act. It would also lead to unjust results. For instance, in cases where the rash and negligent driving of a vehicle belonging to the Government or a public sector undertaking and a vehicle belonging to a private individual were both causes for an accident, there is every likelihood of collusion or compromise between the claimant and the owner of the private vehicle whereby the claimant could to receive smaller amount and not to proceed against him, for, it would be in addition to the whole of the compensation which the claimant could recover even by proceeding only against the State or the public undertaking concerned and collecting the entire

amount from them. Learned counsel for the Corporation submitted that it has actually so happened in many cases and, as a result, the Corporation has not been in a position to recover from the concerned private owner, his share of the liability. 42. For these reasons, we answer the two main questions arising for consideration in these cases as follows : In the case of death or injury caused by a motor accident on account of the rash and negligent driving of more than one motor vehicle : (A) the owners of all such vehicles are several tortfeasors, i.e., each of the owners is a separate tortfeasor and, consequently, the liability of each of the owners of the vehicles is separate and distinct and, therefore, there should be apportionment of the compensation awarded in proportion to the negligence, as found by the Motor Accidents Claims Tribunal. (B) section 110B of the Act authorises and requires the Motor Accidents Claims Tribunal to make apportionment of the compensation as against each of the owners of such vehicles in proportion to the negligence of the driver of each of the vehicles. 43. We, however, make it clear that our conclusion as above is subject to section 92A of the Act. It reads : "92A. Liability to pay compensation in certain cases on the principle of no fault. - (1) Where the death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the vehicles shall, jointly and severally be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section. (2) The amount of compensation which shall be payable under sub-section (1) in respect of the death of any person shall be a fixed sum of fifteen thousand rupees and the amount of compensation payable under that sub-section in respect of the permanent disablement of any person shall be a fixed sum of seven thousand five hundred rupees. (3) In any claim for compensation under sub-section (1), the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrong act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person. (4) A claim for compensation under sub-section (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement." 44. As can be seen from the above, an exception is created by section 92A providing for payment of compensation for the death or permanent disablement of any person caused by a motor accident on the principle of no fault to the extent specified in section 92A(2). For the first time, section 92A not only created "no fault liability" but also made it a joint and several liability of the owners of all the vehicles in the case of an accident arising out of the use of more than one motor vehicle to the extent specified in section 92A(2). Except to this extent, the liability would be several in the case of an accident caused by the rash and negligent driving of more than one vehicle. The object of section 92A and connected provisions in Chapter VIII is to provide some interim relief forthwith to the sufferers by securing payment to

the extent specified in section 92A(2). This is, however, subject to adjustment in the final award, as is made clear by sub-section (3) of section 92B. It reads : "92B. Provisions as to other right to claim compensation for death or permanent disablement. - (1) The right to claim compensation under section 92A in respect of death or permanent disablement of any person shall be in addition to any other right (hereafter in this section referred to as the right on the principle of fault) to claim compensation in respect thereof under any other provision of this Act or of any other law for the time being in force. (2) A claim for compensation under section 92A in respect of death or permanent disablement of any person shall be disposed of as expeditiously as possible and where compensation is claimed in respect of such death or permanent disablement under section 92A and also in pursuance of any right on the principle of fault, the claim for compensation under section 92A shall be disposed of as aforesaid in the first place. (3) Notwithstanding anything contained in sub-section (1), where in respect of the death or permanent disablement of any person, the person liable to pay compensation under section 92A is also liable to pay compensation in accordance with the right on the principle of fault, the person so liable shall pay the first mentioned compensation and :- (a) if the amount of the first-mentioned compensation is less than the amount of the second-mentioned compensation, he shall be liable to pay (in addition to the first-mentioned compensation) only so much of the second-mentioned compensation as is equal to the amount by which it exceeds the first-mentioned compensation; (b) if the amount of the first-mentioned compensation is equal to or less than the amount of the second-mentioned compensation, he shall not be liable to pay the second-mentioned compensation." 45. Our conclusion which is summarised in the preceding paragraph, therefore, applies to compensation claimed on the principle of fault and not to the compensation payable under section 92A of the Act on principle of no fault. Therefore, so far as the compensation payable under section 92A is concerned, in the case of an accident arising out of the use of more than one motor vehicle, that section, in addition to the creating of new liability called no fault liability (see United India Insurance Co. Ltd. v. Immam Aminsab Nadaf [1990] 67 Comp Cas 287 (Kar) [FB], the said no fault liability is also made the joint and several liability of the owners of the vehicles concerned. However, while making the final award on ground of fault, the Tribunal has the power and duty to apportion the said liability in proportion to the fault and fix it on the owner who has failed to pay the amount payable by him under section 92A and reduce the liability of the owner who has paid the entire amount payable under section 92A of the Act proportionately. Further, if the amount awarded under section 110B, even ultimately, in a given case, is only to the extent and in terms of section 92A which is a joint and several liability, the Tribunal should specify the total amount payable to the claimant, by more than one person, and should also make an order to the effect that if one of them has paid or pays the portion of the amount payable by another which he is bound to, in view of section 92A, the same award is executable by the former against the latter to the extent of the latter's liability, for both in view of section 110B and the bar to the jurisdiction of the civil court incorporated in section 110F, the

Tribunal is under a duty to make a full and complete adjudication of all questions arising in a claim application under section 110A. 46. Now, we proceed to consider the case regarding the liability of the appellant-corporation in the light of our answer to the first two questions. In this case, what has happened is that the claimants have filed claim petitions alleging that they suffered injury as a result of the rash and negligent driving of the vehicle belonging to the corporation. In the claim petition in the relevant column, the claimants have given only the particulars of the bus belonging to the corporation. They were under a duty to furnish the particulars of the lorry which also caused the accident. They failed to do so. In the statement of objections filed on behalf of the Corporation, as stated earlier, a specific statement was made to the effect that the accident occurred on account of the rash and negligent driving of a lorry bearing registration No. CNS 4319. Even thereafter, neither the claimants nor the appellants furnished the names of the driver, owner and insurer of the lorry and requested the Tribunal to issue notice to them. They failed to do so. The Tribunal also, in our opinion, was after perusing the objection statement, in view of rule 346 of the Rules, under a duty to call upon the claimants or the appellants to furnish those particulars and to issue notice to them. This was not done. The appellant-corporation, however, adduced evidence in support of its plea that the accident occurred on account of the rash and negligent driving of the lorry. Though the Tribunal did not accept the plea to the fullest extent, on the basis of the evidence on record, it recorded a finding that the accident occurred on account of composite negligence of both the drivers and the proportion of negligence of the driver of the bus of the corporation was only to the extent of 50 per cent. but passed an award for the entire amount against the appellant. In view of the clear finding by the Tribunal as to the extent of negligence by the driver of the appellant's vehicle, we are unable to uphold the foisting of the entire liability on the corporation. In view of our answer to the questions of law furnished earlier, we hold that, in the present case, in view of the finding recorded by the Tribunal regarding the proportion of negligence, the Corporation is answerable only to the extent of 50 per cent. of the compensation awarded and the award, therefore, has to be modified accordingly. 47. As far as the quantum of compensation fixed by the Tribunal and also the finding that the accident occurred on account of the negligence to the extent of 50 per cent. of the driver of the appellant-corporation is concerned, the findings are based on evidence and we find no substance in the challenge to those findings. 48. The next question for consideration is as to how the claimants should get the rest of the compensation from the owner of the lorry. For the situation in which the claimants have placed themselves, they are mainly responsible. In our opinion, it was the duty of the claimants to have furnished the registration number of the lorry, the names of the driver and the owner thereof including the insurance company, if any, with which the lorry was insured, in the claim petition. This is evident from Form No. 82 which is prescribed for making applications for compensation under section 110A of the Act read with rule 343 of the Rules. The relevant portion of the application reads : "An application for compensation arising out of motor accident. To The Motor Accidents Claims

Tribunal, Necessary particulars in respect of the deceased/injured, the vehicle, etc., are given below : 14. Registration No. and the type of the vehicle involved in accident ..... 15. Name and address of the owner of the vehicle ..... 16. Name and address of the insurer of the vehicle ..... I, ... solemnly declare that the particulars given above are true and correct to the best of my knowledge." 49. As can be seen from columns 14, 15 and 16, it is the duty of the claimant to furnish the correct information and particulars about the vehicle involved in the accident, as also about the name of the owner and the insurer. It follows that if, in a given case, more than one vehicle had caused the accident, resulting in death of or injury to any person which gave rise to the claim petition, it is the duty of the applicant to furnish the particulars of all the vehicles. Further, in respect of an accident which was caused by the rash and negligent driving of more than one vehicle, the claimant cannot choose to disclose information about one vehicle alone and fail to disclose information about the other vehicles involved in the accident. In fact, in order to enable the claimant to furnish the information about the owner and insurer of the vehicles which caused an accident, section 109 is incorporated into the Act. It reads : "109. Duty to furnish particulars of vehicle involved in accident. - A registering authority or the officer-in-charge of a police station shall, if so required by a person who alleges that he is entitled to claim compensation in respect of an accident arising out of the use of a motor vehicle, or if so required by an insurer against whom a claim has been made in respect of any motor vehicle, furnish to that person or to that insurer, as the case may be, on payment of the prescribed fee any information at the disposal of the said police office relating to the identification marks and other particulars of the vehicle and the name and address of the person who was using the vehicle at the time of the accident or was injured by it." 50. Therefore, an applicant cannot say that he was not having information about the other vehicle involved in the accident. He should get it by approaching the registering authority or the police officer concerned and secure the information and furnish it in the application. In the present case, the information in respect of the lorry also ought to have been secured and furnished by the claimant. After such an application is filed before the Tribunal, furnishing all the particulars, notices have to be issued to all such parties as required under rule 346. It reads : "346. Notice to parties involved. - If the application is not dismissed under rule 345, the applicant shall pay in the form of court fee stamps, a process fee of one rupee for each respondent for service of notice and thereafter the Claims Tribunal shall send to the owner of the motor vehicle involved in the accident and its insurer, a copy of the application together with a notice of the date on which it will hear the application and may call upon the parties to produce on that date any evidence which they may wish to tender." 51. In this case, no notice was issued to the lorry owner as the necessary information was not furnished by the claimant. At least this should have been done after the appellant gave the registration number of the lorry involved in the accident and the claimants should have requested the Tribunal to issued notice to the driver, owner, and insurer of the lorry. Even that was not done. 52. Learned counsel for the respondents, how-

ever, submitted that it was unnecessary for the respondents to have furnished the name of the driver or the owner or the insurer of the lorry. He submitted that for claiming compensation on the ground of tort, the joint tortfeasor was not a necessary party and, therefore, it was left to the choice of the claimant to proceed against one of the tortfeasors and to secure the entire compensation from him and the only remedy open to the person who is compelled to meet the entire liability was to file a suit for contribution against the joint tortfeasor who is not made a party to the proceedings. In support of his submission, learned counsel relied on the judgment of the Gujarat High Court in Hiraben Bhaga v. Gujarat State Road Transport Corporation, . 53. Learned counsel pointed out that, in the said case, even though an application for impleading the owner of another vehicle involved in the accident was made, the application was rejected and an award was passed only against the Gujarat Road Transport Corporation even in the absence of the joint tortfeasor as a respondent to the claim petition. They also relied on the judgment of the Madras High Court in the case of State of Tamil Nadu v. P. K. Anandan [1982] ACJ 358, in which a similar view was taken. He also relied on a decision of the Kerala High Court in United India Fire and General Insurance Co. v. Verghese [1989] ACJ 472. The relevant portion read (page 475) : "In the view, the relief which is sought in this appeal cannot be granted. It may look that in spite of a finding that the driver of the bus was negligent only to the extent of 75 per cent. his insurer shall pay the entire compensation in view of the stratagem adopted by the injured in not claiming any relief against the owner and driver of the jeep and consequently, against the insurer of that vehicle. But his stratagem is one sanctioned by law. There are many oddities in law, and this may be one such." 54. As can be seen from all the above decisions, they proceeded on the basis of the principle applicable for filing suits against joint tortfeasors, whose liability in law is joint and several and held that a joint tortfeasor is not a necessary party to such a suit. But, in view of our conclusion reached earlier to the effect, (1) that drivers/owners of more than one vehicle involved in a motor accident occurring on account of rash and negligent driving of the vehicles are several tortfeasors and their liability is also several in proportion to the negligence of the drivers; (2) that section 110A of the Act read with rule with rule 433 and Form No. 82 requires the claimant to furnish the registration number of all the vehicles involved in the accident and the names of the owners and insurers of all the vehicles; (3) that under sections 110, 110A read with sections 110B and 110F of the Act the Tribunal has exclusive jurisdiction to decide all questions including the proportion of negligence of the drivers and apportionment of compensation payable by each of the owners and does not contemplate a subsequent suit in a civil court regarding apportionment. 55. We are unable to accept the contention urged by learned counsel for the respondents. 56. The question whether the owner and insurer of another vehicle involved in an accident is a necessary party or failure to implead such owner is fatal to the claim petition are not at all apposite to an application filed under section 110A in the prescribed form for, in our opinion, the Motor Accidents Claims Tribunal is a special tribunal having exclusive jurisdiction to decide every question necessary for complete and final adjudication

arising out of an application or claim for compensation under section 110A of the Act leaving no part of the dispute to be settled in a subsequent civil suit. Therefore, the only relevant question would be to whom the Tribunal should issue notice. Having regard to the scheme of the Motor Vehicles Act and rule 346 of the Rules, there is no room for doubt that the Tribunal must issue notice to every owner of the vehicle involved in an accident and every insurer of such vehicle, if the vehicle was covered by insurance and to give all of them opportunity to have their say. Only then, the Tribunal will be in a position to make a full and complete adjudication of the claim. Therefore, it is the duty of every claimant/applicant to furnish the registration number of every vehicle by the driving of which in a rash and negligent manner the accident which gave rise to the claim petition occurred. If, in any given case, as has happened in this case, such particulars are not furnished, the Tribunal, on coming to know from the statement of objection that there is a plea that rash and negligent driving of another vehicle caused the accident, the claimant should be called upon to furnish the name of the owner and insurer of such vehicle and should issue notice to them. If the claimant fails to furnish the particulars, he should be asked to proceed with the case at his own risk in that in the event of a finding that the negligence of the driver of the vehicle, the owner of which alone to whom notice had been issued in the claim petitions, as has happened in this case, is only a part, then the claimant would be entitled to get compensation from such owner, only to the extent and in proportion to the negligence of that driver. However, the claim petitions cannot be dismissed on the ground that no notice is served on one of the several tortfeasors by not furnishing the particulars of the other vehicle involved in the accident, for, again it should be noted that it is not a civil suit but a special proceedings under the special provisions of the Act. The only effect of it would be that in the event of a finding that the driver of the vehicle whose owner alone was served with a notice was only partly negligent, the claimant would be entitled to receive only a part of the compensation. 57. One other subsidiary question which was raised at the time of hearing was, if in a given case, the claimant failed to furnish the registration number of another vehicle involved in the accident, and the names of the owner and insurer of such vehicle in the application made under section 110A of the Act and he furnishes, or he is called upon by the Tribunal to furnish those particulars subsequently and by that time six months' time for filing the claim petition under section 110 is over, is it open to the person to whom notice is issued, thereafter, to plead that the claim application as far as he is concerned, is barred by limitation and if so, whether sufficient cause should be shown by the claimant, for the delay in furnishing the names of such owner and insurer to the Tribunal. Regarding the above question as also regarding the nature of the jurisdiction of the Tribunal, the matter is not res integra. On these aspects, a Division Bench of this court in Basappa v. K. H. Sreenivasa Reddy, has stated thus : "16. This court, in a Division Bench decision, in the case of M. Krishnappa v. Madras Motor and General Insurance Co. [1971] 1 Mys LJ 86 has further observed thus : 'The form prescribed under the Motor Vehicles Rules for a claim to the Tribunal appears inadequate and misleading. The form does not provide for different heads in

respect of which compensation is claimable ..... Therefore, the form should not be treated like a plaint and if any claim for compensation has been made, it is for the Tribunal to find out what compensation should be awarded on all heads for which the opposite party is responsible.' This court relied approvingly on a decision of the Bombay High Court rendered by a Division Bench in the case of Bessarlal Laxmichand v. Motor Accidents Claims Tribunal, Greater Bombay, . In that case, analysing the relevant sections, their Lordships have observed that it is for the Tribunal to find out the names of the relevant parties and issue notices to them and that the proceeding before the Tribunal cannot be treated as a suit before a regularly constituted civil court. Thus, the Tribunal was not justified in applying the strict procedure and rules of pleadings applicable to a suit in considering the claim petitions. Besides, it is for the Tribunal to find out actionable negligence on the part of a particular respondent. The opinion of a claimant is not decisive of the fact. The Tribunal has to appreciate the entire evidence on record and has to come to the conclusion as to who is negligent. The finding on negligence has to be given by the court and not by a party or a witness. The opinion of a party or a witness in that behalf has no legal relevance. It is the finding of the Tribunal on appreciation of evidence that becomes decisive. Respondents Nos. 4 and 5 were given opportunity to contest and it is on full hearing that the Tribunal has recorded its finding. In the instant cases, the claimants have added respondents Nos. 4 and 5 after the objection statement of original respondents Nos. 1 to 3 was filed as they took up the contention that the negligence was on the part of the driver of the"KSRTC" bus and, thereafter, the owner and the driver of the KSRTC bus filed their objection statement and they have participated in the proceeding. A specific issue is raised by the Tribunal in that behalf. Appreciating the entire evidence on record adduced both by the claimants as also by the respondents, the Tribunal has recorded its finding that the negligence in causing the accident was on the part of the driver of the KSRTC bus. Hence, the Tribunal ought to have pursued its own finding and given relief to the claimants on the basis of its own finding about actionable negligence. There is no substance in the contention that respondents Nos. 4 and 5 were added as parties beyond the period of limitation. Limitation is prescribed for instituting a petition. When once the petition is instituted in time with some of the relevant parties, addition of necessary parties could be made later. Besides, under the Rules, it is the duty of the Tribunal to add and issue notices to necessary parties (vide rule 346)." 58. We respectfully agree with the above view. 59. As can be seen from the above decision, it is open for a claimant and even necessary to furnish all the information necessary for adjudication of all the questions including the question of compensation. This is also evident from column 22 which reads : "Any other information that may be necessary or helpful in the disposal of the claim." 60. As far as the registration numbers and the names of owners and insurers of all the vehicles involved in an accident are concerned, it is obligatory for the applicant to furnish them at columns 14, 15 and 16. If there is failure to furnish any part of information at the time when the application is filed and it is furnished later, it has no effect at all on the question of limitation so long

as the application was presented in time as held by this court in the case of Basappa, . 61. For these aforesaid reasons, we answer the subsidiary questions as follows : (A) It is obligatory for the claimant to furnish the particulars of all the vehicles involved in the accident including the names of owners and also the names of the insurers of all such vehicles insured in Form No. 82 presented under the Rules. (B) It is obligatory for the Tribunal to direct issue of notice to the owners and insurers of all the vehicles involved in the accident, if such particulars are furnished in the claim petition if not as and when it is furnished by the claimant on his own or on a direction by the Tribunal, in view of rule 346 of the Rules. (C) The period of limitation of six months prescribed under sub-section (3) of section 110A of the Act does not operate as a limitation for issuing notice to the owner and insurer or driver of a vehicle whose particulars were not furnished in the application filed in time and came to be furnished subsequently after the expiry of the period of six months. 62. In view of our answer to the main questions and the subsidiary questions, it follows that, in these cases, having regard to the finding recorded by the Tribunal that the accident which gave rise to the claim petition out of which these appeals arise was on account of the negligence of the driver of the appellant-corporation and the driver of the lorry bearing Registration No. CNS 4391, in view of section 110B of the Act in equal proportions, the Tribunal should have fixed only 50 per cent. of the liability against the appellant and 50 per cent. of the liability on the owner of the lorry. But the Tribunal could not fix the liability in respect of 50 per cent. of the compensation against the owner of the lorry for the reason that no notice had been issued to its owner. In the circumstances, what the Tribunal did was to direct the appellant to pay the entire compensation leaving it to the appellant to file a civil suit against the owner of the lorry by paying the court-fee. In our opinion, such a situation as pointed out by us earlier, is not at all contemplated by the provisions of the Act. All claims of compensation arising out of a motor accident and all questions in respect for the award of compensation including the question as to who are the persons liable to pay the compensation and to what extent must be decided in a claim petition presented under section 110A of the Act. From this, it follows that the applicant should have taken steps to get a notice issued to the owner of the lorry and its insurer, if any. It was also the duty of the Tribunal to have issued notice to the owner and/or insurer of the lorry after calling upon the claimant to do so in view of the specific information furnished in the statement of objection filed by the appellant. It was contended for the respondents that the appellant, in its written statement, did not specifically say that the owner of the lorry must be impleaded as a respondent. But, as held by the Supreme Court in the case of Ram Sarup Gupta v. Bishun Narain Inter College, AIR 1987 AC 1242, the object and purpose of pleading is to enable the adversary party to know the case it has to meet and that, whenever lack of pleading is raised, the enquiry should not be so much about the form of pleadings but the court must find out the substance. If we look at it from that angle, by paragraphs 7 and 8 of the statement of objection, it was made known to the respondent that the rash and negligent driving of lorry CNS 4319 was the cause for the accident and the

parties as also the Tribunal understood the plea in that manner as is evident from the finding recorded by the Tribunal. Therefore, we find no substance in the contention of the respondents that there was any lack of pleading. It is true, as contended by learned counsel for the respondent that the appellant also could have secured the name of the owner and insurer and furnished it to the Tribunal. Whatever that may be, the fact remains that the primary duty of furnishing the said information was on the claimants. They failed in their duty. Therefore, there was no justification to call upon the appellant to pay the entire compensation in the face of the finding that the negligence of the driver of the bus belonging to the corporation which brought about the accident was only to the extent of 50 per cent. For all these reasons, we hold that the award made by the Tribunal for the entire amount against the appellant cannot be sustained and it should be reduced to 50 per cent. 63. Learned counsel for the respondents submitted that if we were to hold that the appellant is liable to pay only 50 per cent. of the compensation awarded, the respondent would be deprived of the rest of the compensation. For the situation in which they have placed themselves, the respondents cannot blame the appellant. It is seen from the records that the police constable on duty had lodged a FIR marked as exhibit P-10 before the Tribunal that the accident occurred on account of the rash and negligent driving of the lorry. Even though that was the position, the claimants, for reasons best known to them, chose to mention in the prescribed Form No. 82 meant for lodging claim under section 110A of the Act only the registration number of the vehicle belonging to the Corporation. The respondents were fully aware of the fact that the lorry also was involved in the accident as also the FIR. No explanation is forthcoming as to why the claimants omitted to furnish the particulars of the lorry in the application and even after having suppressed that information made a declaration below the application that the facts stated in the application were true, though it was only partly true. 64. In view of the situation brought about, it appears that the appropriate course for us is to modify the award appealed against and to fix only 50 per cent. of the liability on the appellant-corporation provisionally and to remit the matter to the Tribunal with a direction to issue notice to the owner and the insurer of the lorry if any, and to decide the question as to whether the owner of the said vehicle was also liable to pay compensation, after giving opportunity of hearing, for the reason that the finding recorded regarding proportion of negligence is without giving an opportunity to the owner and/or driver of the lorry. 65. To sum up, our conclusions are as follows : In the case of a motor accident brought about by the rash and negligent driving of more than one motor vehicle resulting in the death of or injury to a person : (1) the driver and the owners of each of the vehicle are several tortfeasors and, therefore, in an application claiming compensation for death or injury to any person, filed under section 110A of the Motor Vehicles Act, 1939, the proportion of negligence of each of the drivers should be determined and apportionment of the total compensation as between or among the several tortfeasors, i.e., as between or among the owner and the insurer of each of the vehicles should be fixed by the Tribunal and as award should be made accordingly. (2) In an application filed under section 110A of

the Act, in view of section 110B of the Act, it is obligatory for the Tribunal to determine the proportion of negligence of each of the drivers and to apportion the amount of compensation awarded as between or among the owners and insurers of the vehicles concerned and make an award accordingly and no part of the dispute can be allowed undecided. (3) It is the duty of the claimant making an application under section 110A of the Act, read with rule 343 of the Karnataka Motor Vehicles Rules and the prescribed Form No. 82, to furnish the registration number of every one of the vehicles involved in the accident as also the name of the owner and the insurer in all cases where the vehicle was insured and he cannot furnish only the registration number of the vehicle of his choice and the names of owner and insurer of such vehicle. If it is found in any given case that the applicant has not done so and it comes to light that in fact some other vehicles were also responsible for the accident, the application is not liable to be dismissed on the principle of non-joinder of necessary parties, but it is the duty of the Tribunal to call upon the parties to furnish the registration number of the vehicle/vehicles, the name of the owner and its insurer and issue notice to all of them, as required under rule 346 of the Rules and should, thereafter, make a full and complete adjudication of the application. When notice is issued to such owner after securing their names and addresses, after the expiry of the period fixed in sub-section (3) of section 110A, in an application filed within the time prescribed under that sub-section, they cannot plead the bar of limitation, for, sub-section (3) of section 110A prescribes the period of limitation only for filing an application and not for issuing notice to any other person whose presence is also necessary to make full and effective adjudication of the claims in terms of section 110B of the Act. 66. For the reasons aforesaid, we make the following order : (i) The appeals are partly allowed. (ii) The appeals in so far as they relate to the quantum of compensation fixed are dismissed; (iii) The award of the Tribunal in so far as it fixes the entire liability on the appellant is modified provisionally to the effect that the liability of the appellant shall be only to the extent of 50 per cent. of the compensation awarded; (iv) The matter is remanded to the Tribunal to a limited extent to decide the question of fixing the liability on the owner of the lorry bearing registration No. CNS 4319 after issuing notice to the owner of the said vehicle and after giving an opportunity of hearing to him, as also to the appellant and the claimants. All of them shall have the liberty of adducing additional evidence or to recall the witnesses already examined; (v) If, after recording the evidence and hearing the parties, the Tribunal were to record a finding that the accident occurred on account of the negligence of the driver of the vehicle of the appellant and the negligence of the driver of the lorry bearing registration No. CNS 4319 in equal proportion, the Tribunal shall pass an award against the owner of the lorry for the balance of the amount. (vi) It, after hearing the lorry owner, the proportion of negligence and/or the quantum of compensation is reduced, the benefit of reduction shall go only to the lorry owner and not to the appellant; (vii) If, after considering the evidence adduced by the owner of the lorry, the Tribunal were to come to the conclusion that the accident occurred on account of the negligence of the driver of the bus belonging to the appellant alone, the Tribunal shall pass an order

directing the appellant to pay the balance amount of compensation as already awarded in the order under appeal; (viii) If the respondents-claimants fail to furnish the name of the owner of the lorry and of the insurer of the lorry, if any, within one month from today, the directions given as above shall lapse and the award as provisionally modified by us shall become final. (ix) The parties are directed to appear before the Tribunal on September 13, 1990, without any further notice by the Tribunal. (x) A copy of this order together with records shall be despatched forthwith to the Tribunal.