Karnataka High Court Karnataka State Road Transport ... vs Arun Alias Aravind on 6 November, 2003 Equivalent citations: II (2004) ACC 53, 2004 ACJ 249, AIR 2004 Kant 149, ILR 2004 KAR 26, 2004 (1) KarLJ 338 Author: N Jain Bench: N Jain, V Sabhahit, H Ramesh ORDER N.K. Jain, C.J. 1. This reference has been placed before this Full Bench as per the order of the Chief Justice, dated 14-10-2003, and has come up before us today. The other connected matters referred involve the same question of law and as agreed they are also taken up together for consideration. 2. For the sake of convenience, the factual matrix of the case with reference to essential facts which are not in dispute, giving rise to this reference can be stated with reference to M.F.A. No. 4552 of 1997 and Cross-appeal No. 11 of 1998 as follows.– In a motor accident that occurred on 15-4-1993 at 21:30 hours on Bagalkot to Guddankeri Road, due to collision of Karnataka State Road Transport Corporation, bus bearing No. MEF/8529 and lorry coming in opposite direction, Arun alias Aravind, aged 31 years, who was travelling as a passenger in the bus, sustained grievous injuries to his right hand and right elbow leading to amputation of right hand above the elbow on 17-4-1993. The injured filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short, the 'Act'), before Motor Accidents Claims Tribunal, Bijapur (M.V.C. No, 603 of 1993), seeking compensation of Rs. 8,15,000/- from the respondents-the driver of bus and Karnataka State Road Transport Corporation, being owner and insurer. The driver, owner and insurer of lorry were not impleaded as the driver drove away the lorry without stopping after the accident and particulars of driver, owner and insurer could not be ascertained. The respondents resisted the claim petition by contending that the accident occurred solely due to rash and negligent driving of the lorry and not due to rash and negligent driving of the bus and since driver, owner and insurer of the lorry are not impleaded in the petition, the petition is not maintainable and even otherwise, quantum of compensation claimed is excessive. The Tribunal after enquiry, by its judgment and award dated 31-3-1997, held that the accident did not occur due to any negligence of the petitioner and occurred due to rash and negligent driving of the drivers of bus and lorry and they were equally blameworthy to the extent of 50% each and further held that the claimant is entitled to compensation of Rs. 1,80,000/- with interest at 6% per annum from the date of petition to the date of payment and since driver, owner and insurer of lorry were not parties to the petition, passed award for Rs. 90,000/- against the respondents. The respondents in the claim petition being aggrieved by the said award, filed M.F.A. No. 4552 of 1997 contending that the accident had occurred solely due to the rash and negligent driving of the lorry and the quantum of compensation awarded is also excessive. The claimant has preferred Cross-appeal No. 11 of 1998 contending that compensation awarded to the claimant could not be reduced for non-impleading of driver, owner and insurer of lorry and quantum of compensation awarded is inadequate and since it is a case of composite negligence, the claimant is entitled to recover full amount of compensation to which he is entitled and he is entitled to recover compensation from either of the joint tort-feasors. 3. When these appeals along with connected appeals were posted for hearing, the Division Bench referred the mat-

ter on 18-7-2003 as it felt that the Full Bench decision of this Court in Ganesh v. Syed Munned Ahatned and Ors., ILR 1999 Kar. 403 (FB), did not consider the following questions.– "1. If the proceedings are finally determined with an award made by the Tribunal and disposed of in some cases by the appeal against the same by the High Court, does the Tribunal not become funclus officio for making any further proceedings like impleading the tort-feasor or initiating action against him legally impermissible? 2. What is the remedy of a tort-feasor who has satisfied the award, but who does not know the particulars of the vehicle which was responsible for the accident?" In the instant case, the particulars, of lorry that was partly responsible for the accident causing injuries are known neither to the appellant-Corporation nor to the injured-claimant and hence, the Division Bench referred the question for consideration whether in the case of an accident arising out of composite negligence causing death or physical injury to the third party, the amount determined by the Tribunal can be recovered from any one of the joint tort-feasors; If so, whether the tort-feasor who satisfies the award has any remedy in law against the other tort-feasor and whether such remedy becomes extinct if the other tort-feasor is unknown. Accordingly, as stated these appeals are before this Bench. 4. Sri D. Kumar, the learned Counsel for Karnataka State Road Transport Corporation, submitted that in view of the provisions of Section 168(1) of the Act, the Tribunal has to specify the amounts which shall be paid by insurer, owner or driver of the vehicle involved in the accident and where the accident has occurred due to negligence of the drivers of both the vehicles, liability has to be apportioned and in the absence of the other joint tort-feasor, liability would be restricted to blameworthiness found on the part of the respondents impleaded and in the present case, in view of finding of the Tribunal in M.V.C. No. 603 of 1993 that both drivers were equally blameworthy in proportion of 50:50, the Tribunal has rightly held that liability of Karnataka State Road Transport Corporation, is only Rs. 90,000/-, being 50% of the amount of compensation as any other view would work out hardship to the respondents, specially where driver, owner and insurer of the other offending vehicle are not parties and the respondents would not be left with any remedy against them and have to satisfy the full award amount though, they are found guilty of blameworthiness to the extent of 50% only and to that extent, the Full Bench decision in Ganesh's case requires modification. 5. The learned Counsel appearing for the Insurance Company, Sri S.V. , reiterated the arguments of the learned Counsel for Karnataka State Road Transport Corporation, and further submitted that the liability of the respondent has to be apportioned and the Insurance Company cannot be asked to pay more than the liability having regard to apportionment of blameworthiness and in the absence of driver, owner and insurer of other joint tort-feasor, owner and Insurance Company cannot be saddled with full liability as the same would be unjust and inequitable and the respondent on record will not have any remedy against the other tort-feasor for contribution after disposal of the claim petition. 6. The learned Counsel appearing for the claimants, Sri Basavaraj Kareddy and Sri A.K. Bhat, submitted that the liability of joint tort-feasors is joint and several and the claimant can choose to proceed against any one of the joint tort-feasors and apportionment

of liability among joint tort-feasors, would not in any way affect the right of the claimant for full compensation and in the absence of the other joint tort-feasors, no finding can be given regarding apportionment of blame worthiness and the respondents can exercise their right in independent proceedings. 7. We have given anxious consideration to the contentions of the learned Counsels appearing for Karnataka State Road Transport Corporation, Insurance Company and the claimants and perused the material on record and the case-law cited. 8. The Tribunal passed the order and award on 31-3-1937 and in view of the decision of Division Bench of this Court in Karnataka State Road Transport Corporation v. Reny Mammen (DB), the Tribunal has held that though the claimant is entitled to compensation of Rs. 1,80,000/-, as only Karnataka State Road Transport Corporation, one of the joint tort-feasors is impleaded and driver, owner and insurer of lorry are not parties, the award has to be reduced to Rs. 90,000/- in view of the finding that blameworthiness on the part of the driver of the bus was found to be 50% only. The Division Bench decision in Reny Mammen's case has been overruled by the Full Bench decision of this Court in Ganesh's case, by holding that where accident has occurred due to composite negligence of the drivers of two vehicles, their liability would be joint and several and the claimant can proceed against both or any one of the joint tort-feasors and recover full compensation to which he is entitled and apportionment of negligence between joint tort-feasors is for the benefit of the respondents to claim contribution from the other tort-feasor if he satisfies the award against the claimant and it is open to the tort-feasor, who satisfies the award to proceed against the other tort-feasor for contribution. 9. The Supreme Court has held in Union of India v. United India Insurance Corporation Limited and Ors., that where accident has occurred due to negligence of the drivers of two vehicles and not due to the negligence of the claimant, one of the joint tort-feasors cannot plead contributory negligence on the part of the passengers of the vehicle and qua the passengers of the bus, who were innocent, the driver and owner of the vehicles would be joint tort-feasors. It is also held that the Motor Accidents Claims Tribunal is clearly alternative forum in substitution of Civil Court for adjudicating upon claims for compensation arising out of the use of the motor vehicles. It is well-settled that the liability of joint tort-feasors is joint and several and each is responsible, jointly with each and all of the others and also severally for the whole of the amount of damage caused by the tort, irrespective of the extent of his participation. The injured may sue any one of them separately for the full amount of loss or he may sue all of them jointly in the same action and even in the latter case, the judgment so obtained against all of them may be executed in full against any one of them. 10. The question as to whether the claimant is liable to implead both joint tort-feasors where he has suffered injury due to composite negligence of two vehicles had come up for consideration of this Court in A. Shivarudrappa v. General Manager, Mysore Road Transport Corporation 1973 ACJ 302 (Kar.) (DB). In the said case, as in the present case, a passenger travelling in bus sustained injury due to collision of bus with a lorry and claim petition was filed against Mysore State Road Transport Corporation only and driver, owner and insurer of lorry were not impleaded. The Tribunal

held that there was no negligence on the part of the driver of bus and driver and owner of the lorry were not parties to the petition and hence, the claimant was not entitled to compensation quantified at Rs. 2,000/- in the said case. In appeal by claimant, a Division Bench of this Court reversed the order of the Tribunal by holding that accident occurred due to negligent driving of both the vehicles and it was a case of composite negligence and liability of tort-feasors was joint and several and hence, notwithstanding non-impleading of driver and owner of lorry, the claimant was entitled to full compensation quantified by the Tribunal. Same view has been taken by Division Bench of Gujarat High Court in Hiraben Bhaga and Ors. v. Gujarat State Road Transport Corporation 1982 ACJ (Supp.) 414 (Guj.) (DB), on similar facts and it is observed as follows.– "4. The second error which the Tribunal committed is of deducting 50 per cent for the contributory negligence of the jeep driver which he assessed at 50 per cent, that is to says to an equal extent. It passes one's understanding as to how could a passenger's compensation be deducted on account of the contributory negligence of the driver of a vehicle. It is entirely the choice of the claimants whether to implead both the joint tort-feasors or either of them. The claimants cannot be saddled with the liability for contributory negligence of one of the joint tort-feasors, if they fails to implead him as one of the opponents, in their claim petition. It would be for the impleaded joint tort-feasor to take proceedings to get the other joint tort-feasor impleaded in the claim petition, or for that matter such an impleaded joint tort-feasor may select to sue the other one after the decree or award is given and the other joint tort-feasor is held liable therein". The above view has been reiterated by Division Bench decision of Delhi High Court in Om Wati (since deceased) through L.Rs v. Mohd. Din and Ors., 2002 ACJ 868 (Del.) (DB) 11. In view of the aforesaid reasoning and decisions of Supreme Court, we have no hesitation to hold that where a claim petition is filed by the injured or legal representatives of the deceased due to injury or death arising out of use of motor vehicles due to the composite negligence of drivers of the two vehicles, the claimant can recover compensation from any one of the joint and the just compensation to which he is entitled cannot be reduced for non-impleading of the other joint tort-feasors and therefore, the decision of the Full Bench in Ganesh's case in this behalf does not require any reconsideration. 12. The next point to be considered is about the rights and remedy of the joint tort-feasor who satisfies the award. It is clear from the provisions of Section 175 of the Act that where Claims Tribunal has been established for any area, no Civil Court shall have jurisdiction to entertain any question which may be adjudicated upon by the Tribunal. Section 168 of the Act enables the Tribunal to make an award determining the amount of compensation which appears to it to be just and to specify the person or persons to whom compensation shall be paid and in making the award the 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 Section 174 of the Act provides that where any amount is due from any person under an award, the Claims Tribunal may on an application made to it by person entitled to the amount, issue a certificate for the amount to the Collector and the Collector shall pro-

ceed to recover the same in the same manner, as an arrears of land revenue. In view of our finding that the claimant can proceed against either or both of the joint tort-feasors where both the joint tort-feasors are parties, if the claimant proceeds against any one of the joint tort-feasors, one joint tort-feasor having satisfied the award, can proceed to recover the amount held to be payable by the other tort-feasor under the same award in accordance with Section 174 of the Act. However, where the claimant has filed a petition against one of the joint tort-feasors without impleading the other tort-feasor, to do which he is entitled to, the joint tort-feasor is bound to satisfy the award and negligence of the other tort-feasor, cannot be a defence to reduce compensation payable to the claimant. So far as the claimant is concerned, his claim cannot be defeated or reduced due to non-impleading of other tort-feasor. The apportionment of negligence or blameworthiness between two joint tort-feasors would arise only when both are parties to the petition. If other joint tort-feasor is not made a party, it is always open to the impleaded respondents to get impleaded other joint tort-feasors so that their respective blameworthiness can be apportioned so as to enable them to claim contribution from the other if the claimant chooses to proceed to recover the amount awarded from one of them only. It is well-settled that in the absence of both the joint tort-feasors, it would not be appropriate to apportion negligence or blameworthiness as the said finding would not be binding on the other joint tort-feasor, who is not a party to the proceedings and Courts and Tribunals should not pass judgment or order, which cannot be executed. However, the only joint tort-feasor, who is made a party to the petition and satisfies the award cannot be said to be without any remedy. It is open to him to claim contribution from the other joint tort-feasor to the extent of his blameworthiness. The Full Bench in Ganesh's case has suggested as follows.– "x x x x x x x x x x x In cases where both the joint tort-feasors are not made as parties to the proceedings, such of the joint tort-feasor, i.e., driver, owner and insurer of the vehicle, who satisfies the award, can continue the same proceedings by impleading the driver, owner and insurer of the other vehicle, which has caused the accident on account of the negligence of the driver of the said vehicle. This procedure, in my view, is permissible in proper understanding of Section 110-F of the Act, and it would also subserve the very object of Chapter VIII of the Act which intends to give expeditious and effective relief to the victims of the motor accidents or the legal representatives of the persons who are killed in such accidents". 13. The Division Bench making this reference felt that while making the above said suggestions the question as to whether an application can be filed in a disposed of petition and in some cases modified in appeal and the remedy of a tort-feasor who has satisfied the award, but, who does not know the particulars of the other vehicle which was responsible for the accident. It is well-settled that provisions of the Motor Vehicles Act regarding establishment of Claims Tribunal to determine just compensation to the victim or the legal representatives of the deceased in a motor vehicle accident is meant to provide a speedy and expeditious forum to the claimants. The object of the Act has been enumerated by the Supreme Court in United India Insurance Company Limited v. Lehru and Ors., as follows.– "In order to divine the intention of the

Legislature in the course of interpretation of the relevant provisions, there can scarcely be a better test than that of probing into the motive and philosophy of the relevant provisions keeping in mind the goals to be achieved by enacting the same. Ordinarily it is not the concern of the Legislature whether the owner of the vehicle insures his vehicle or not. If the vehicle is not insured any legal liability arising on account of third party risk will have to be borne by the owner of the vehicle. Why then has the Legislature insisted on a person using a motor vehicle in a public place to insure against third party risk by enacting Section 94? Surely, the obligation has not been imposed in order to promote the business of the insurers engaged in the business of automobile insurance. The provision has been inserted in order to protect the members of the community travelling in vehicles or using the roads from the risk attendant upon the user of motor vehicles on the roads. The law may provide for compensation to victims of the accidents who sustain injuries in the course of an automobile accident or compensation to the dependants of the victims in the case of a fatal accident. However, such protection would remain a protection on paper unless there is a guarantee that the compensation awarded by the Courts would be recoverable from the persons held liable for the consequences of the accident. A Court can only pass an award or a decree. It cannot ensure that such an award or decree results in the amount awarded being actually recovered, from the person held liable who may not have the resources. The exercise undertaken by the law Courts would then be an exercise in futility. And the outcome of the legal proceedings which by the very nature of things involve the time cost and money cost invested from the scarce resources of the community would make a mockery of the injured victims, or the dependants of the deceased victim of the accident, who themselves are obliged to incur not inconsiderable expenditure of time, money and energy in litigation. XXX XXX XXX When the option is between opting for a view which will relieve the distress and misery of the victims of accidents or their dependants on the one hand and the equally plausible view which will reduce the profitability of the insurer in regard to the occupational hazard undertaken by him by way of business activity, there is hardly any choice. The Court cannot but opt for the former view. Even if one were to make a strictly doctrinaire approach, the very same conclusion would emerge in obeisance to the doctrine of 'reading down' the exclusion clause in the light of the 'main purpose' of the provision so that the 'exclusion clause' does not crosswords with the 'main purpose' highlighted earlier. The effort must be to harmonize the two instead of allowing the exclusion clause to snipe successfully at the main purpose. XXX XXX XXX

It need not be pointed out that the whole concept of getting the vehicle insured by an Insurance Company is to provide an easy mode of getting compensation by the claimants, otherwise in normal course they had to pursue their claim against the owner from one forum to the other and ultimately to execute the order of the Motor Accidents Claims Tribunal for realization of such amount by sale of properties of the owner of the vehicle. The procedure and result of the execution of the decree is well-known".

In view of the above principles laid down by the Supreme Court, we have no hesitation to hold that where the name of other joint tort-feasor is not known, the only joint tort-feasor on record is bound to pay the compensation awarded to the claimant and the question of apportionment of blameworthiness in the absence of that joint tort-feasor does not arise.

14. In view of the above discussion, we answer the referred question by holding that the Full Bench decision in Ganesh's case does not require any reconsideration. It is seen that in an accident case, generally the Insurance Company is liable to pay compensation as per the terms of the policy. But, when the accident is on account of composite negligence of two or more vehicles, the claimant is entitled to proceed against any of the tort-feasors for full compensation for the injuries suffered or the death caused, as the liability is joint and several. The question of apportionment does not arise, if the other joint tort-feasor has not been impleaded as party. However, after ascertaining and impleading the other joint tort-feasor as a party, the tort-feasor can exercise his right of contribution in accordance with law. In other words, when the other joint tort-feasor is not a party, the Tribunal should refrain from giving any finding about apportionment or negligence, in the absence of other tort-feasor, to avoid any exercise in futility and leave the said question of liability of joint tort-feasors to be adjudicated, if the joint tort-feasor who satisfies the award is able to find out the name of the other joint tort-feasor and seeks to exercise right of contribution in accordance with law.
15. The miscellaneous first appeals and cross-appeals shall be posted before the appropriate Bench for disposal on merits.