Pawan Kumar & Anr vs M/S Harkishan Dass Mohan Lal & Ors on 29 January, 2014

Equivalent citations: 2014 AIR SCW 1062, 2014 (3) SCC 590, 2014 AAC 957 (SC), AIR 2014 SC (SUPP) 1922, (2014) 2 ALLMR 954 (SC), (2014) 3 ANDHLD 117, (2014) 4 MAH LJ 548, (2014) 2 MAD LJ 124, (2014) 1 ACC 386, (2014) 1 SIM LC 495, (2014) 57 OCR 860, (2014) 3 MPLJ 1, (2014) 135 ALLINDCAS 8 (SC), (2014) 2 PUN LR 646, (2014) 1 TAC 718, (2014) 2 ALL WC 1904, (2014) 2 CGLJ 29, (2014) 2 KER LJ 224, (2014) 1 ACJ 704, (2014) 2 MAD LW 870, (2014) 1 WLC(SC)CVL 329, (2014) 2 CIVLJ 789, (2014) 103 ALL LR 675, (2014) 2 JCR 190 (SC), (2014) 4 BOM CR 641, (2014) 1 KER LT 571, (2014) 1 SCALE 760, (2014) 2 RECCIVR 764, AIR 2014 SC (CIVIL) 771, (2014) 2 PAT LJR 1, (2014) 1 CURCC 48

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Bench: Shiva Kirti Singh, Ranjan Gogoi, P. Sathasivam

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 5906 OF 2008

PAWAN KUMAR & ANR. ETC. ... APPELLANT (S)

VERSUS

M/S HARKISHAN DASS MOHAN LAL & ORS. ... RESPONDENT (S)

J U D G M E N T

RANJAN GOGOI, J.

1. The appellants were the claimants in the proceedings instituted for award of compensation under the Motor Vehicles Act, 1988 (hereinafter referred to as “the Act”). They are aggrieved by the decision of the High Court of Punjab & Haryana at Chandigarh in F.A.O. Nos. 695, 407 and 408 of 1995 dated 05.07.2006 by which, though their claim for compensation has been upheld, the liability to pay the same has been apportioned between the drivers/owners of the two vehicles involved in the motor accident. The appellants contend that as they were third parties to the claim, the High

Court ought to have made the drivers/owners of the vehicles jointly and severally liable to pay compensation in view of their composite negligence instead of apportioning their liability by invoking the principle of contributory negligence.

2. The brief facts that will be required to be noticed may now be set out:

> Deceased Yogesh (12 years) and Parshotam D. Gupta and injured Salochna were travelling in Jeep No.PB-03-6848 from Sirsa, Haryana to Vaishno Devi on 19.06.1993. The jeep which is owned by the respondent No.1 and driven by the respondent No.2 met with an accident with a truck coming from the opposite direction as a result of which Parshotam D. Gupta and Yogesh died on the spot whereas Salochna received serious injuries. Claim petitions were filed by the parents of Yogesh and the legal heirs of deceased Parshotam Dass including Salochna who is his wife. The injured Salochna also filed a separate claim petition in respect of the injuries sustained by her in the same accident. As the truck involved in the accident had fled from the spot, the driver/owner and insurer of the said truck could not be impleaded in any of the claim petitions filed by the claimants.
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> The Motor Accident Claims Tribunal (for short "the Tribunal) by its award dated 07.11.1994 held that the truck alone was responsible for the accident and in the absence of the driver/owner or the insurer of the said vehicle, no compensation can be awarded to any of the claimants. Aggrieved, the matter was carried in appeal. The High Court by its order dated 05.07.2006 held that both the truck as well as the jeep, in which the deceased and the injured were travelling, were responsible for the accident. The High Court further held that the liability of the driver/owner of the truck should be estimated at 70% and that of the driver/owner of the jeep at 30%. Accordingly, the High Court held that in respect of the death of Yogesh, compensation of Rs.2,00,000/- would be the just and fair compensation payable to the legal heirs. 30% thereof i.e. Rs.60,000/- was held to be payable by the driver/owner/insurer of the jeep. In respect of deceased Parshotam, the High Court held that the amount of compensation payable would be Rs.5,76,000/- and accordingly made the respondent Nos.1, 2 and 3 (insurer) liable to pay 30% of the said compensation which comes to Rs.1,72,800/-. Insofar as the injuries sustained by Salochna is concerned, the High Court computed the amount of compensation payable at Rs.2,00,000/- and made the respondent Nos. 1, 2 and

3 liable for compensation to the extent of 30% of the said amount i.e. Rs.60,000/-. Aggrieved by the said order, the appellants/claimants have filed the present appeal.

3. We have heard the learned counsels for the parties.

4. Learned counsel for the appellants has contended that though the High Court has rightly held both the vehicles to be responsible for the accident it has committed a glaring error in invoking the principle of contributory negligence in the present case and in apportioning the liability between the

drivers/owners of the two vehicles. Relying on the decision of this Court in T.O. Anthony Vs. Karvarnan & Ors.[1] which has been followed in a subsequent decision in Andhra Pradesh State Road Transport Corporation & Anr. Vs. K. Hemlatha & Ors.[2], learned counsel has urged that in a case where the claimant is a third party (other than the driver/owner of the vehicles involved in the accident) the correct principle for determination of the liability is that of composite negligence which would make the drivers/owners of the two vehicles jointly and severally liable. The principle of contributory negligence so as to apportion the liability between the drivers/owners would be relevant only if the claim for compensation is by one of the drivers himself or by his legal heirs, as the case may be. It is, therefore, contended that the apportionment made by the High Court is against the settled principles of law laid down by this Court.

5. Learned counsel appearing for the respondent No.1 has argued that even if the view taken by the High Court that both the vehicles were responsible for the accident is to be accepted, the liability of the joint tortfeasors has to be apportioned which has been so done by the High Court. It is also submitted that in the absence of any specific material the apportionment of compensation, as determined by the High Court, ought not to be disturbed.

6. The distinction between the principles of composite and contributory negligence has been dealt with in Winfield & Jolowicz on Tort (Chapter 21) (15th Edition, 1998). It would be appropriate to notice the following passage from the said work:-

> "WHERE two or more people by their independent breaches of duty to the plaintiff cause him to suffer distinct injuries, no special rules are required, for each tortfeasor is liable for the damage which he caused and only for that damage. Where, however, two or more breaches of duty by different persons cause the plaintiff to suffer a single injury the position is more complicated. The law in such a case is that the plaintiff is entitled to sue all or any of them for the full amount of his loss, and each is said to be jointly and severally liable for it. This means that special rules are necessary to deal with the possibilities of successive actions in respect of that loss and of claims for contribution or indemnity by one tortfeasor against the others. It is greatly to the plaintiff's advantage to show that that he has suffered the same, indivisible harm at the hands of a number of defendants for he thereby avoids the risk, inherent in cases where there are different injuries, of finding that one defendant is insolvent (or uninsured) and being unable to execute judgment against him. The same picture is not, of course, so attractive from the point of view of the solvent defendant, who may end up carrying full responsibility for a loss in the causing of which he played only a partial, even secondary role.
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> The question of whether there is one injury can be a difficult one. The simplest case is that of two virtually simultaneous acts of negligence, as where two drivers behave negligently and collide, injuring a passenger in one of the cars or a pedestrian, but there is no requirement that the acts be simultaneous. ....."

7. Where the plaintiff/claimant himself is found to be a party to the negligence the question of joint and several liability cannot arise and the plaintiff's claim to the extent of his own negligence, as may be quantified, will have to be severed. In such a situation the plaintiff can only be held entitled to such part of damages/compensation that is not attributable to his own negligence. The above principle has been explained in T.O. Anthony (supra) followed in K. Hemlatha & Ors. (supra). Paras 6 and 7 of T.O. Anthony (supra) which are relevant may be extracted hereinbelow:

> "6. "Composite negligence" refers to the negligence on the part of two or more persons. Where a person is injured as a result of negligence on the part of two or more wrongdoers, it is said that the person was injured on account of the composite negligence of those wrongdoers. In such a case, each wrongdoer is jointly and severally liable to the injured for payment of the entire damages and the injured person has the choice of proceeding against all or any of them. In such a case, the injured need not establish the extent of responsibility of each wrongdoer separately, nor is it necessary for the court to determine the extent of liability of each wrongdoer separately. On the other hand where a person suffers injury, partly due to the negligence on the part of another person or persons, and partly as a result of his own negligence, then the negligence on the part of the injured which contributed to the accident is referred to as his contributory negligence. Where the injured is guilty of some negligence, his claim for damages is not defeated merely by reason of the negligence on his part but the damages recoverable by him in respect of the injuries stand reduced in proportion to his contributory negligence.
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> 7. Therefore, when two vehicles are involved in an accident, and one of the drivers claims compensation from the other driver alleging negligence, and the other driver denies negligence or claims that the injured claimant himself was negligent, then it becomes necessary to consider whether the injured claimant was negligent and if so, whether he was solely or partly responsible for the accident and the extent of his responsibility, that is, his contributory negligence. Therefore where the injured is himself partly liable, the principle of "composite negligence" will not apply nor can there be an automatic inference that the negligence was 50:50 as has been assumed in this case. The Tribunal ought to have examined the extent of contributory negligence of the appellant and thereby avoided confusion between composite negligence and contributory negligence. The High Court has failed to correct the said error."
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> 8. In the present case, neither the driver/owner nor the insurer has filed any appeal or cross objection against the findings of the High Court that both the vehicles were responsible for the accident. In the absence of any challenge to the aforesaid part of the order of the High Court, we ought to proceed in the matter by accepting the said finding of the High Court. From the discussions that have preceded, it is clear that the High Court was not correct in apportioning the liability for the accident between drivers/owners of the two vehicles.

9. We, accordingly, hold that the drivers/owners of both the vehicles are jointly and severally liable to pay compensation and it is open to the claimants to enforce the award against both or any of them. The order of the High Court dated 05.07.2006 is modified to the extent indicated above and the appeal is allowed.

.....CJI.

[P. SATHASIVAM] .....J. [RANJAN GOGOI] .....J. [SHIVA KIRTI SINGH] NEW DELHI, JANUARY 29, 2014.

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[1] (2008) 3 SCC 748
[2] (2008) 6 SCC 767
