

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 18328 of 2022

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NATIONAL INSURANCE CO. LTD.

Versus

HEENBEN HEMANTKUMAR MODI

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Appearance:

MR. ALKESH N SHAH(3749) for the Petitioner(s) No. 1

for the Respondent(s) No. 1,2

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CORAM:**HONOURABLE MS. JUSTICE GITA GOPI**

Date : 02/03/2023

ORAL ORDER

1. By way of this petition, the challenge is given to the order 09.05.2022 passed by the learned Motor Accident Claims Tribunal (Main), Surat in M.A.C.P. No.512 of 2019 whereby the application of the Insurance Company – Exhibit 17 came to be rejected wherein the prayer has been made to join the Owner, Driver and Insurance Company of the other offending vehicle which in this case is a Honda City Car bearing Registration No.GJ-05-JM-0284.
2. Learned Advocate for the petitioner Mr. Alkesh N. Shah has referred to the decision in the case of **Khenyei v. New India Assurance Co. Ltd.** reported in **2015 9 SCC 271** where the Hon'ble Apex Court has

laid down the proposition of law in case of petition urged on the composite negligence of the offending vehicle. Learned Advocate Mr. Shah has also relied on the judgment of the Division Bench of this Court in the case of **New India Assurance Co. Ltd. v. Muna Maya Basant W/o. Sher Bahadur Basant** reported in 2001 1 GLR 915 to contend that wherever there are more than one tortfeasor, it would be desirable to join the other one, concerned left out claimed to be another tortfeasor, for a just decision of the matter.

3. In the above referred decision of **Muna Maya Basant** (supra), the decision in the case of **Gujarat State Road Transport Corporation v. Gurunath Shahu** reported in 1989 1 GLR 581 has been referred to, where it has been held that where there are more one tortfeasors, technically a claim petition against one of the tortfeasors is not bad, but it is desirable that the Tribunal will not adopt the easy course which may quickly dispose of the matter. Such disposal gives rise to other litigations. Therefore, whenever a plea for joining another joint-tortfeasor is raised and prayed for, it would be better for the Tribunal to insist that all the tortfeasors are brought

on record.

4. In the case of **Khenyei v. New India Assurance Co. Ltd.** reported in **2015 9 SCC 271** it was held by the the Hon'ble Apex Court as under :-

“What emerges from the aforesaid discussion is as follows :

(i) In the case of composite negligence, plaintiff/claimant is entitled to sue both or any one of the joint tort feasons and to recover the entire compensation as liability of joint tort feasons is joint and several.

(ii) In the case of composite negligence, apportionment of compensation between two tort feasons vis a vis the plaintiff/claimant is not permissible. He can recover at his option whole damages from any of them.

(iii) In case all the joint tort feasons have been impleaded and evidence is sufficient, it is open to the court/tribunal to determine inter se extent of composite negligence of the drivers. However, determination of the extent of negligence between the joint tort feasons is only for the purpose of their inter se liability so that one may recover the sum

from the other after making whole of payment to the plaintiff/claimant to the extent it has satisfied the liability of the other. In case both of them have been impleaded and the apportionment/ extent of their negligence has been determined by the court/tribunal, in main case one joint tort feisor can recover the amount from the other in the execution proceedings.

(iv) It would not be appropriate for the court/tribunal to determine the extent of composite negligence of the drivers of two vehicles in the absence of impleadment of other joint tort feisors. In such a case, impleaded joint tort feisor should be left, in case he so desires, to sue the other joint tort feisor in independent proceedings after passing of the decree or award.”

5. It is true that for the claimant incase of composite negligence, it would be his discretion to join the respondent accordingly. The another tort feisor would be a necessary party where in a case when the negligence has been appropriated, the counter tortfeisor can initiate to recover the amount from either of the parties on the basis of the negligence

attributed. As has been rightly observed and as has been laid down in the case of **Muna Maya Basant** (supra) by the Division Bench of this Court, whenever a plea for joining another tortfeasor is raised and prayed, it would be better for the Tribunal to insist that all the tortfeasors are brought on record.

6. Thus, in view of the above discussion this petition is allowed. The order 09.05.2022 passed by the learned Motor Accident Claims Tribunal (Main), Surat in M.A.C.P. No.512 of 2019 is quashed and set aside. The petitioner – Insurance Company is permitted to join the referred party of Exhibit 17 in the Motor Accident Claims Petition No.512 of 2019 which is pending before the learned Motor Accident Claims Tribunal (Main), Surat.

Direct Service is permitted.

CAROLINE

Sd/-
(GITA GOPI, J)