

# **RMM LAW COLLEGE SAHARSA**

## **LAW OF TORTS**

### **IIIrd Part**

### **Paper -V**

### **TOPIC- Contributory and Composite Negligence**

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### **Introduction**

In the case of contributory negligence, a person who has himself contributed to the extent cannot claim compensation for the injuries sustained by him in the accident to the extent of his own negligence; whereas in the case of composite negligence, a person who has suffered has not contributed to the accident but the outcome of combination of negligence of two or more other persons.

In **T.O. Anthony v. Karvarnan & Ors.** [2008 (3) SCC 748] has held that in case of contributory negligence, injured need not establish the extent of responsibility of each wrong doer separately, nor is it necessary for the court to determine the extent of liability of each wrong doer separately. It is only in the case of contributory negligence that the injured himself has contributed by his negligence in the accident. Extent of his negligence is required to be determined as damages recoverable by him in respect of the injuries have to be reduced in proportion to his contributory negligence.

### **The relevant portion is extracted hereunder :**

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 wrong doers, it is said that the person was injured on account of the composite negligence of those wrong-doers.

In such a case, each wrong doer, 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 wrong-doer separately, nor is it necessary for the court to determine the extent of liability of each wrong-doer 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 of 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 stands reduced in proportion to his contributory negligence.

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. •

### **Important case laws**

The decision in **T.O. Anthony v. Karvarnan & Ors.** has been relied upon in **Andhra Pradesh State Road Transport Corpn. & Anr. v. K Hemlatha & Ors. [2008 (6) SCC 767]** In **Pawan Kumar & Anr. v. Harkishan Dass Mohan Lal & Ors. [2014 (3) SCC 590]** the decisions in **T.O. Anthony Case and Hemlatha Case** have been affirmed, and Apex Court has laid down that where claimant himself is found to be negligent jointly and severally, liability cannot arise and the claimant's claim to the extent of his own negligence, as may be quantified, will have to be severed. He is entitled to damages not attributable to his own negligence.

The law/distinction with respect to contributory as well as composite negligence has been considered by Supreme Court in **Machindranath Kernath Kasar v. D.S. Mylarappa & Ors.[2008 (13) SCC 198]** and also as to joint tort feasons.