

### **Contributory negligence**

In most countries, a victim's claim may be reduced if they're found to possess contributed to the collision (or the casualty severity).If within the following:Claimant wasn't wearing a seat belt,Head restraint not properly adjusted, Two wheeled rider/occupant not wearing a security helmet(both motorcyclists and cyclists).

Key governmental agencies guilty of road safety rules covering the management of traffic are issued by the Ministry of Road Transport and Highways, Government of India and are statute in the car Act of India. The Act is presently being amended with numerous new rules that affect many factors that area unit known to extend risk of crashes, like exceptional speed limits, failing to use seat belts, improper seating of a baby in vehicle, use of a transportable whereas driving, and failing to wear a helmet whereas driving or riding a motorcycle.

Our new 'golden hour' policy can give immediate relief to accident victims and can facilitate save Lakh of lives.The Golden Hour policy provides for treatment to road accident victims at intervals one hour.Other options embody unified vehicle registration system, single National Road Transport & international Coordination Authority and product Transport and National Freight Policy.It encompasses provisions for safety of vehicles, together with implementation of safety instrumentality of motorcars.

### **Composite and Contributory Negligence**

Contributory negligence is when the claimant himself has been negligent and has contributed to the occurrence of the accident. Contributory negligence is normally not attributed to young children. In contributory negligence the victim himself has contributed and therefore, his compensation gets reduced in proportion to his fault. Thus, if the victim is equally negligent and has contributed to the accident in equal measures, he would get only half the compensation. On the other hand, composite negligence means where the accident occurs due to negligence of

two or more persons but not the victim. In Andhra Pradesh Road Transport Corporation vs. K. Hemlatha<sup>43</sup>, the Apex Court has held as under:-

“13. In an accident involving two or more vehicles, where a third party (other than the drivers and/or owners of the vehicles involved) claims damages for loss or injuries, it is said that compensation is payable in respect of the composite negligence of the drivers of those vehicles. 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.

But in respect of such an accident, **if the claim is by one of the drivers himself** for personal injuries, or by the legal heirs of one of the drivers for loss on account of his death, or by the owner of one of the vehicles in respect of damages to his vehicle, then the issue that arises is not about the **composite negligence** of all the drivers, but about the **contributory negligence** of the driver concerned. 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.**”

In composite negligence though the Tribunal may ascertain the percentage of contribution of negligence between the two or more negligent parties but all the tortfeasers have to be held jointly and severally liable. The claimant can claim the entire compensation from all or any one of them. In this regard reference may be made to judgments of the High Court of H.P. in H.R.T.C vs. Smt. Breekan Devi<sup>44</sup> ; H.R.T.C vs. Smt. Meena<sup>45</sup> and that of the Apex Court in New India Assurance Company Limited vs. Yadu Sambhaji More<sup>46</sup>

Recently, it has been held in National Insurance Company Ltd. Vs. Sinitha<sup>47</sup> that it is open to the owner or insurance company, as the case may be, to defeat a claim u/s 163A of the MV Act by pleading and establishing through cogent evidence a 'fault' ground (wrongful act or neglect or default) as Section 163A of the Act was held to be founded under 'fault' liability principle. ***In such circumstances, the compensation can be reduced on proof of contributory negligence.***