

HIGH COURT OF CHHATTISGARH, BILASPUR

M. A. No. 838 of 2005

National Insurance Company Limited, through the Divisional
Manager, Divisional Office, Raipur (C.G).

---- Appellant

Versus

1. Siya Ram Nishad, aged about 28 years, S/o Ankalaha Nishad
Occupation Labour, R/o village Saddhu, Post Tarpongi, P.S.
Dharsiwa, Tahsil and District Raipur (C.G).
2. Mojam Miyan, aged about 40 years, s/o Lalle Miyan, through :
Balaji Transport, Bhanpuri, Tahsil and District Raipur (C.G).
(Driver)
3. Gokul Chand s/o not known, through : Balaji Transport,
Bhanpuri, Tahsil and District Raipur (C.G). *(Owner of Truck)*

---- Respondents

For Appellant	:	Mr. Dashrath Gupta, Advocate
For Respondent No.1	:	Mr. A.L. Singraul, Advocate

HON'BLE SHRI JUSTICE GOUTAM BHADURI

JUDGMENT ON BOARD

13/08/2015

1. This is an appeal against the award dated 08.04.2005 passed
in Claim Case No.162/2004 by the 5th Additional Claims
Tribunal. By such award, the claim filed by injured Siya Ram
Nishad was adjudicated and a total compensation of
Rs.5,51,410/- was granted.
2. Brief facts of the case are that the petition was filed by Siya
Ram Nishad with the averments that on 11.06.2004 he was
travelling in Tractor bearing Regn. No.C.G.04-D/1739 Trolley
No.C.G.04-D/1740 in the capacity of labour (*Hamal*). When

the said Tractor reached at ring road No.2 near Sarora Khalsa Dhabha at that time, a truck bearing Regn.No.WB-33/9610 driven by the original non-applicant Mojam Miyan in rash and negligent manner dashed the Tractor Trolley whereby the claimant Siyaram Nishad sustained grievous injuries and his left leg was amputated. It is further stated that the driver of the Tractor Trolley namely Nanhu Yadav also died in the said accident.

3. The instant appeal is by the National Insurance Company who is the insurer of the offending Truck. Shri Dashrath Gupta, learned counsel appearing on behalf of the Insurance Company submits that the Tractor was also liable for contributory negligence and therefore the entire liability cannot be fastened over the Insurance Company being the insurer of the Tractor.
4. Per contra, learned counsel for respondent No.1 opposed the argument of the appellant.
5. I have heard learned counsel for the parties and have also perused the records.
6. Along-with this appeal, the records of M.A. no.798 of 2005 are tagged wherein the order passed by the Division Bench of this Court on 02nd January 2006 is on record. The said appeal i.e., M.A.798/2005 was also filed by the National Insurance Company against the award which was passed for the death of one Nanhu Yadav, the driver of Tractor. In the said appeal the insurance company contended that the Tractor trolley was also liable for contributory negligence. The Division Bench of this Court by order dated 2nd January 2006 held that since the insurance company did not adduce any evidence to

substantiate that the Tractor also attributed to the negligence in causing accident, the said plea cannot be accepted and it would remain as a plea without any proof. Accordingly, the appeal filed by the Insurance Company was dismissed.

7. In the instant case, since the present appeal arises out of the same accident, similar facts and law are applicable and since the insurance Company has failed to substantiate the plea of contributory negligence, the said plea remained as a plea without any proof. There is no reason to deviate from the order passed by the Division Bench of this Court on 02nd January 2006 in M.A. No.798/2005. Accordingly, the factual findings recorded by the learned Tribunal on the basis of evidence on record, cannot be faulted with.
8. In the result, the appeal is devoid of merit and it is dismissed.

Sd/-

**GOUTAM BHADURI
JUDGE**