

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No.639 of 2013

State of Chhattisgarh, through the Executive Engineer, H.E.M.
Division, W/R Division, Bilaspur (CG), D.T. Of A/c 12/201 (CG) –
Vehicle Owner

---- Appellant

Versus

1. Shivlochan Singh, S/o Shanker Singh, aged about 38 years (***injured person***) through *Vad Mitra Sona*, wife of Shivlochan Singh, aged about 36 years, resident of village & post Semrakala, Tahsil Pratappur, District Surajpur (C.G).
2. Balaprasad, aged about 52 years, s/o Mantulal Ahirwar, Occupation – **Driver**, Office - Sub Divisional Officer, Vidyut Yantriki, F.O.M [wrongly mentioned M.O.M], Ambikapur, District Surguja (C.G).

---- Respondents

For the Appellant/State	:	Mr. S.C. Khakharia, Deputy Advocate General with Ms. Farah Minhaj, Panel Lawyer
For Respondent No.1	:	Mr. D.N. Prajapati, Advocate
For Respondent No.2	:	None

Hon'ble Shri Justice Goutam Bhaduri

Judgment on Board

19.08.2015

1. This is an appeal against the award dated 16.01.2013 passed by the Additional Claims Tribunal, Pratappur, Distt. Surajpur (C.G) in Claim Case No.7 of 2012 whereby the Tribunal has partly allowed the claim petition by awarding Rs.2,81,500/-.
2. The brief facts of the case are that a claim petition was preferred by one Shivlochan Singh, through his next friend wife namely Sona on the averments that on 24.03.2008 the injured was going to Ambikapur on his motorcycle bearing No. C.G.15-A/6071. On the way at about 1.00 p.m., while he was moving on the left side of the road main road of Kerta Village near sugar factory at a moderate speed, a Truck

bearing Regn. No.C.G.02/0973 driven by non-applicant Balaprasad in rash and negligent manner dashed the said motorcycle whereby the injured fell down and sustained severe injuries on his head. The said truck belonged to the State Government and it was being used for the activities of Government. Consequently, on different heads, an amount of Rs.5,58,000/- was claimed for the injuries sustained by him in the said accident. It was further stated that because of his fall on the ground, the claimant sustained head injury which resulted into fracture of the skull bone, therefore, he was initially treated at Ambikapur. Thereafter, considering his condition, he was referred to BHU Hospital, Varanasi. It is further stated that because of such accident, the claimant Shivlochan Singh lost his mental balance and became permanently mentally disabled. It is further contended that he was doing the work of Mason and used to earn Rs.200/- per day and consequent to the accident, he is unable to discharge his job. Therefore, on different heads, the amount of claim was made.

3. The non-applicants in reply to the averments of claim denied the entire facts pleaded in the claim petition. It was also stated that no accident has actually happened by the offending Truck. It was further pleaded that the claimant himself might have dashed with another vehicle and shifted the entire allegations on the non-applicants and false report was made. It was also pleaded that the claimant was not able to drive the motorcycle as he is not holding the license to drive the vehicle. Therefore, the claim so made was denied and consequently the payment of liability was also refuted by the State.
4. The learned Tribunal after assessment of the facts and evidence on record has passed the award of Rs.2,81,500/-. Hence, the instant appeal is by the State.
5. Learned counsel appearing on behalf of the appellant/State would submit that filing of claim petition itself was bad since the injured was

not insane, therefore, the petition filed by the next friend was bad in law. It is further contended that there should have been an enquiry by the Trial Court to find out such insanity. It is further submitted that the treating doctor in this case was not examined, therefore, the mental condition of the injured has not been proved and in the medical report no definite opinion was given. It was further stated that according to the statement in criminal case, the claimant himself admitted the fact that he was responsible for the accident. Consequently, the finding arrived at by the learned Tribunal is perverse.

6. Per contra, learned counsel appearing on behalf of the respondent No.1 supported the award. It is stated that the award is well merited which do not call for any interference by this Court.
7. I have heard learned counsel for the parties at length and have also perused the documents.
8. This fact was established that the petition was preferred by the wife being the next friend. Further more, in examination-in-chief, during the evidence the wife has stated that after the accident, the memory of his husband has become weak. This part also remains uncontroverted in cross examination. Consequently the objection so raised by the State Counsel is misconceived.
9. Another submission which is raised that the treating doctor was not examined so as to establish the mental condition of the applicant. In this regard, the wife has stated that after the accident, because of the head injury her husband has lost memory for which he was initially treated at Ambikapur and thereafter at BHU Hospital, Varanasi. The documents in this respect have been exhibited from Ex.P-6 to P-54. A perusal of these documents would show that initially the applicant was admitted to Hospital at Ambikapur on 26.3.2008 and subsequently looking to the seriousness, he was admitted to BHU

Hospital, Varanasi vide Ex.P-7. Ex.P-7 is bed head ticket of the applicant. Reading of such Ex.P-7 would show that the applicant was admitted to hospital for head injury. Reading of such document would further reveal that till the applicant was admitted to Hospital at Varanasi on 26.03.2008, he was unconscious. Further the medical documents of the hospital proved by the wife shows that because of head injury, the surgery was suggested by the doctors. The document Ex.P-10 is proved by one of the doctors namely Sanjay Gupta. He stated that he examined the applicant and after examination, he found that he had head injury, therefore, injured was referred to neurology department. If the statement of the doctor Sanjay Gupta is read along-with Ex.P-10, it shows that same OPD No. Psy/5194/08 is referred in the statement (Ex.P-10) and thereby it can be inferred that the applicant was further examined by the doctors on reference and injured had an head injury. Documents Ex.P-11 to Ex. P-37 pertains to the medical bills of the treatment. Ex.P-41 is medical certificate which purports that the petitioner was admitted to hospital for the head injury. Further documents from Ex.44 to P-54 are the documents of Banaras Hospital wherein the claimant was treated. The denouements bear the seal that they were obtained under the RTI Act by the claimant. Consequently, the authenticity of those documents pertains to the documents of treatment and the same cannot be denied. It is a settled preposition that the degree of nature of proof is different in claim cases as it is expected of the criminal cases. Therefore, the documents, if they are considered together with the statement of claimant, it cannot be held that no head injury was ever caused to the claimant. Hence the finding arrived at by the learned Tribunal cannot be faulted with.

10. A perusal of the award would further show that no evidence has been adduced on behalf of the non-applicants. Though the arguments has been advanced on the issue that the claimant was liable for

contributory negligence but in order to prove the contributory negligence, the defence has to adduce evidence before the Tribunal. In the instant case, no evidence has been adduced by the appellant/State. Similar preposition has been laid down in case of ***National Insurance Company Limited v. Sinitha & others, (2012) 2 SCC 356*** wherein the Court has held that in case when theory of contributory negligence is raised then the onus of proof of contributory negligence lies on the shoulder of defence (owner or insurer). Therefore, in the instant case, applying the aforesaid principle since no evidence was adduced either by the insurance company or the owner & driver, the presumption of contributory negligence cannot be accepted.

11. In the result, the appeal filed by the State has no merit and it is dismissed. No order as to costs.

Sd/-

**GOUTAM BHADURI
JUDGE**