

**NAFR**

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**MA No. 8 of 2002**

Nitin Kumar Choubey

**---- Appellant/applicant**

**Versus**

Balram Yadav & others

**---- Respondents**

---

|                     |   |                                |
|---------------------|---|--------------------------------|
| For appellant       | : | Mr. Vimlesh Bajpai, Advocate.  |
| For Respondent No.4 | : | Mr. Shivendu Pandya, Advocate. |
| For State           | : | Ms. M. Asha, Panel Lawyer      |

---

**Hon'ble Shri Justice Manindra Mohan Shrivastava**

**Order On Board**

**07/01/2016**

Heard.

Though, this case is listed for orders on default of non-compliance of order dated 12.10.2015 regarding non payment of fresh P.F. for respondent No.1 with delay application, respondent No.1 was proceeded ex-parte before the Claims Tribunal.

There is oral prayer for exemption from payment of P.F. to respondent No.1.

Upon due consideration of the fact that respondent No.1 was proceeded ex-parte, the prayer is allowed. The appellant is exempted from serving notice on respondent No.1 the driver.

With the consent of the parties, the matter is heard finally.

Learned counsel for the appellant raised sole submission that even after having found that the appellant sustained injury due to accident and that the offending vehicle was being driven negligently, the Claims Tribunal has recorded a perverse finding of contributory negligence by drawing an inference on the basis of nature of injury

caused to the appellant, as discussed in para 10 of the impugned order.

Learned counsel for the appellant argued that the appellant examined as many as four witnesses and each of them has categorically stated that the appellant was sitting on the window seat but his hand was not protruding out from the window. Only on the basis that the injury was caused to the appellant by a sharp object, the Claims Tribunal has jumped to the conclusion that it would not have happened unless the appellant had waved his hand out of the window at the time of accident.

On the other hand, learned counsel for the Insurance Company opposed and submits that the inference which has been drawn by the Claims Tribunal is reasonable. He submits that the nature of injury could be caused because the appellant was waving his hand outside the window at the time of accident. Therefore, the Claims Tribunal has rightly recorded the finding of contributory negligence and provided appropriate and reasonable compensation.

The appellant has examined as many as four witnesses including the injured. All of them have stated in categorical words that while the bus was moving on the road, the offending truck came from the opposite side with uncontrolled speed and even though the bus was being driven on its side, the uncontrolled truck rubbed and dashed against the bus. As the appellant was sitting on the window seat, he suffered an injury on his hand resulting in amputation of the arm.

There is no evidence led by the Insurance Company or by any other respondent nor is there any evidence to show that the appellant was acting negligently by waving his hand outside the window of the bus, due to which, he sustained injury.

Learned Claims Tribunal only on the basis of the inference drawn from the injury, has come to the conclusion, which is not sustainable in law in the absence of there being any clinching evidence of contributory negligence.

In the result, to the extent indicated above, the impugned award cannot be sustained. The finding of contributory negligence is

set aside.

The appellant would now be entitled to full amount of compensation as assessed by learned Claims Tribunal along with the same rate of interest from the date of the award.

The appeal is accordingly allowed.

Sd/-  
(**Manindra Mohan Shrivastava**)  
**J U D G E**

Rekha