

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Misc. Appeal (C) No. 300 of 2009**

Dhalendra Sahu S/o Ramlal Sahu, aged about 50 years, R/o Charouda,
Police Station and Tahsil Palari, District Raipur (CG)

---- Appellant**Versus**

1. Baleshwar S/o Datturam Sahu, aged about 26 years, R/o Bhawanipur,
Police Station Palari, District Raipur (CG) (Driver – Hero Honda CD
Delux CG 1747 CS/1747)
2. Parmanand Sahu S/o Mantram Sahu, R/o village Bhawanipur, Police
Station Palari, District Raipur (CG) (Owner – Hero Honda CD Delux CG
1747 CS/1747)
3. Ifco Tokiyo General Insurance Company Limited, third floor, shop no.
345-347, Lal Ganga Shopping Mall, G.E. Road, Raipur (CG)

---- Respondents

For Appellant	:	Shri S. P. Sahu under instruction of Shri P. P. Sahu, Advocate
For Respondent no. 3	:	Shri P. Acharya, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****07/11/2017**

The challenge in the present appeal is to the order dated 27.09.2008 passed by the 1st Additional Motor Accident Claims Tribunal, Baloda Bazar (CG) in Claim Case No. 19 of 2007. Vide the impugned award, in an injury case, the Tribunal has awarded a compensation of Rs.71,250/- with interest @ 7% per annum from the date of application.

2. Counsel for the appellant submits that the finding of the Tribunal to the extent of fastening 25% of contributory negligence on the appellant is bad in law. He submits that the Tribunal has not properly appreciated the

compensation considering the gravity of injury sustained by the appellant. He further submits that the reasons assigned by the Tribunal in paragraph-8 of the impugned judgment for fastening the contributory negligence are not proper, legal and justified for the reason that admittedly the appellant in the instant case was travelling on the main road and the offending vehicle came from a bylane and dashed the appellant's vehicle. The finding of contributory negligence is based on assumption and presumption and has no substantive basis. He further submits that both the hands of the appellant received grievous injury and that the doctor has also been examined who has assessed the disability at 37%.

3. Counsel for the Insurance Company, however, opposes the appeal and submits that the award passed by the Tribunal is just and reasonable based on the evidence which has come on record and therefore there is no scope of interference with the impugned award.

4. Having considered the rival contentions put forth on either side and on perusal of the record, so far as the finding of contributory negligence is concerned, this Court has no hesitation in reaching to the conclusion that the reasoning given by the Tribunal can not be sustained, for the reason that as per the finding of the Tribunal itself the appellant was moving on the main road and it is always the responsibility of the person travelling on the bylane to ensure proper safety measure before entering the main road. This by itself is a sufficient ground to set aside the contributory negligence assessed by the Tribunal. The order of contributory negligence is therefore set aside/quashed and it is held that the entire responsibility of payment of compensation shall be upon the Insurance Company, the owner and the driver of the offending vehicle i.e. Hero Honda motorcycle bearing registration No. CG 04 CS 1747.

5. So far as the compensation is concerned, true it is that the doctor has opined in this case of having sustained injury with disability of 37%. But taking into consideration the nature of accident particularly the disability assessed by the doctor, this Court is of the opinion that ends of justice would meet if the appellant is awarded a lump sum compensation of Rs.50,000/- in addition to the compensation of Rs.95,000/- as assessed by the Tribunal. Thus, the appellant shall be entitled for a total compensation of Rs.1,45,000/- in stead of Rs.95,000/- as awarded by the Tribunal as the finding of contributory negligence stands set aside. The enhanced amount shall also carry interest at the same rate as has been fixed by the Tribunal.

**Sd/-
(P. Sam Koshy)
JUDGE**