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HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 279 OF 2008

- Bajaj Allianz General Insurance Company Limited, through Branch Manager, Shiv Mohan Bhavan, Vidhan Sabha Marg, Pandri, Raipur, Tahsil & District Raipur (C.G.) (Insurance Company)

... Appellant

versus

1. Komal Sahu, age-22 years, S/o Maniram Sahu, R/o Village- Ghorbhatti, Thana- Kharora, District- Raipur (C.G.) (Claimant)
2. Mahesh Nishad, S/o Ghanaram Nishad, R/o Village- Fingeshwar, Thana- Rajim, District- Raipur (C.G.) (Driver of Tractor No. CG04-DA/2305 and Trolley No. CG04-ZG/6494)
3. Santosh Thadani, R/o Village- Fingeshwar, Thana- Rajim, District- Raipur (C.G.) (Owner of Trolley No. CG04-ZG/6494)
4. Kiran Kumar Dewangan, age-27 years, S/o Sadharam Dewangan, R/o Village- Ghorbhatti, Thana- Kharora, District Raipur (C.G.) (Owner of Vehicle No. CG04-CF/8761)
5. The New India Assurance Company Limited, R.D.A. Building, Bajrang Market, Raipur (C.G.) (Insurance Company of Vehicle No. CG04-CG/8761)
6. Ashok Singh Rajput, S/o Ratan Singh Rajput, R/o Village & Post Fingeshwar, Thana- Rajim, District Raipur (C.G.) (Owner of Tractor No. CG04-DA/2305)

... Respondents

For Appellant	:	Mr. Sangeet Kumar Kushwaha, Advocate, under instructions of Mr. Sachin Singh Rajput, Advocate.
For Respondent 1	:	Mr. A.L. Singroul, Advocate.
For Respondents 2, 3 & 6:	:	Mr. P.K. Tulsyan, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

06/10/2017

1. The present is an appeal under Section 173 of the Motor Vehicles Act, 1988, preferred by the appellant-insurance company, assailing the award dated 17.12.2007 passed by the 7th Additional Motor Accidents Claims Tribunal, Raipur, in Claim Case No. 92/2006.
2. Vide the impugned award dated 17.12.2007, the learned Tribunal, in a proceeding under Section 166 of the Motor Vehicles Act, in an injury case, has awarded a compensation of Rs. 1,88,100/- to respondent no.1-claimant, with interest thereon at the rate of 6% per annum from the date of filing of the claim application.

3. Challenge to the impugned award by the appellant-insurance company is primarily on the ground that the learned Tribunal has not appreciated the fact that there was an element of contributory negligence on the part of the claimant for the accident to occur and the amount of compensation ought to have been properly apportioned and deducted accordingly. It was also the contention of the insurance company that the disability assessed by the learned Tribunal while quantifying the compensation is also on higher side, considering the nature of injuries which the claimant had sustained. It was further the contention of the insurance company that the driver of the offending vehicle was not having a valid driving licence at the time of accident and which has not been properly proved before the Tribunal and therefore the insurance company should have been exonerated of its liability and the liability should have been fastened upon the owner-cum-driver. It was next contended that the trolley attached to the tractor involved in the accident was also not duly insured with the insurance company and for all these, the appeal deserves to be allowed and the liability be shifted accordingly.

4. A perusal of the record would show that before the Tribunal the appellant-insurance company has not led any evidence to substantiate any of the contentions raised by them. Further, in the instant case the claimant was a pillion rider and therefore the factor of contributory negligence cannot be applied in the present case.

5. Further, from the evidence which have come on record if we take into consideration the nature of injuries which have been caused to the claimant, that is the fracture of his left hand and right leg, and the other injuries which have been sustained by the claimant, the disability assessed by the Tribunal while quantifying the compensation cannot be found fault with.

6. In the light of there being no specific evidence led by the appellant-insurance company, this Court finds it difficult to interfere with the impugned award passed by the learned Tribunal.

7. The appeal thus fails and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge

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