

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 153 of 2014**

- Santram Sahu S/o Awadh Ram Sahu Aged About 25 Years R/o Village Kherud, P.S. And Tahsil Gunderdehi, District Balod C.G.

---- Appellant**Versus**

1. Mohd. Gani S/o Mohd. Usman Khan R/o Near Masjid, Kelabadi, Durg, Tahsil And District Durg C.G.
2. Mohd. Usman Khan S/o Mohd. Anwar Khan R/o Near Masjid, Kelabadi, Durg, Tahsil And District Durg C.G.
3. Shriram General Insurance Company Limited Through - Claim Manager, O/o E/h. Apartment, Rikko Industrial Area, Seetapur, Jaipur (Rajasthan)

---- Respondent

For Appellant : Shri P.R. Patankar, Advocate.
 For Respondent No. 3 : Shri Deepak Gupta, Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra
Hon'ble Shri Justice Arvind Singh Chandel

Order On Board By Prashant Kumar Mishra, J.

18/07/2017

1. This appeal for enhancement of the award amount has been preferred by injured Santram Sahu, who sustained injuries on his left leg in an accident involving Mini Bus No.CG-07-E/0116.
2. The Claims Tribunal has awarded a sum of Rs.70,980/-, however, on

finding that the appellant has also contributed in causing accident, liability of the driver and the appellant has been apportioned in the ratio of 50:50 and thus total award amount in favour of the appellant stood at Rs.35,490/-.

3. Placing reliance on the judgments in the matters of **Minu Rout & Anr. Vs. Satya Pradyumna Mohapatra & Ors.** {2013 AIR SCW 5375}, **Bajaj Allianz Insurance Co. Ltd. Vs. Smt. Sahodra Bai Kaushik & Others** {2014 (4) CGLJ 4} and **Sobnath Sahu & Another Vs. Mohd. Mahfuj Alam & Others** {2014 (3) CGLJ 259}, it is argued that in the absence of any evidence led by the Insurance Company to prove that the appellant also contributed in causing accident, the finding of contributory negligence recorded by the Claims Tribunal is perverse. It is also argued that the amount awarded on the head of pain and suffering, attendant etc. is on substantially lower side.
4. Per contra, learned counsel for respondent No.3 would submit that the finding of contributory negligence is borne out from the material available on record, therefore, the same need not be disturbed. He would support the quantum of compensation awarded on other heads.
5. Insofar as the finding of contributory negligence is concerned, on scrutiny of the record, it would appear that the appellant himself submitted certified copy of the charge sheet in which offence was registered against the driver of mini bus under Sections 279, 337 and

338 of the IPC. The charge sheet also contains medical report of the appellant wherein the doctor has clearly opined that the appellant had consumed alcohol and was smelling at the time of examination. This evidence has been discussed by the Claims Tribunal along with other material to conclude that the appellant being drunk at the time of accident, it was a head on collision between the motorcycle driven by the appellant and the mini bus. It is a case of contributory negligence. Thus, in our considered view, the finding of contributory negligence recorded by the Tribunal is duly supported by the evidence available on record.

6. In the cases relied by the appellant, it is held that for recording finding of contributory negligence there has to be pleading and evidence. In this context, we have perused the written statement filed by the Insurance Company wherein it is specifically pleaded in para-3 that the appellant was drunk and was in state of intoxication, therefore, he himself was responsible for causing accident. In view of this pleading and the medical evidence available on record, it is not a case where there is lack of pleading or evidence in support of the fact of finding of contributory negligence. Challenge to the impugned award on this count fails.
7. We have also perused the treatment papers of the appellant from which we have gathered that the appellant was operated for the injuries suffered on his left leg and in course of operation, nuts and bolts were

inserted. He remained in hospital for about 13 days. Therefore, considering the nature of treatment including surgical intervention, the amount of Rs.10,000/- towards pain and suffering appears to be on lower side. The Tribunal should have awarded at least Rs.25,000/- on this head. Similarly for obtaining the services of attendant, the Tribunal has awarded only Rs.1500/- which deserves to be increased to Rs.5,000/-. Considering the length of his admission in the hospital and the post discharge care which he might have undergone, the amount on the head of Special Diet also deserves to be increased from Rs.1500/- to Rs.3000/-. Similarly, the amount of Rs.10,000/- on the head of loss of amenities also appears to be on lower side which should have been awarded at Rs.20,000/-.

8. Thus the appellant is awarded total compensation of Rs.1,00,980/-. Since contributory negligence has already been proved, the total amount of compensation arrived at by this Court requires to be halved, which comes to Rs.50,490/-. Rest of the impugned award shall remain unchanged.
9. Accordingly, the Appeal is allowed in part with the aforesaid modification in the award under challenge.

Sd/-
Judge
 (Prashant Kumar Mishra)

Sd/-
Judge
 (Arvind Singh Chandel)

