

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 466 of 2016**

1. Mohammad Latif S/o Jamun Ali, Aged About 40 Years R/o Village Dumardiha, Post- Bekobaar, P.S.- Kodrama, Tahsil & District- Kodrama (Jharkhand)
2. Smt. Nuresha Khatoon W/o Mohammad Latif, Aged About 38 Years R/o Village Dumardiha, Post- Bekobaar, P.S.- Kodrama, Tahsil & District- Kodrama(Jharkhand)Claimants

---- Appellants**Versus**

1. Diwakar Malik S/o Niranjan Malik, Aged About 39 Years R/o Village Mirga Hato Kunda, P.S.- Ghusri, District Bhadak (Orissa)(Driver)
2. Sukhchain Singh S/o Preetam Singh, Aged About 50 Years R/o A Mouja, Airkheda, Plot No.16, Gurunanank Pura, Aapke Chowk, Maharashtra (Nagpur)(Owner)
3. National Insurance Company Limited, Through- Divisional Manager, Station Road, Gil Complex, Near Gurudwara, Durg, Tah. & Distt.- Durg, Chhattisgarh(Insurer)
4. R.R. Roadways Company Limited, Through- Manager, Ring Road No.2, Near Tatibandh, Heerapur, Kabirnagar Raipur, District- Raipur, Chhattisgarh(Owner Of Trailer)
5. Reliance General Insurance Company Limited, Through- Claim Manager, G.E.Road, Maruti, In Front Of Business Park, National Corporate Park, Commercial Complex, Shop No.516, 5th Floor, Raipur, Tahsil & District- Raipur, Chhattisgarh(Insurer)

---- Respondents

For Petitioner : Shri P.R. Patankar, Advocate.
 For Respondent No. 3 : Shri Shivendu Pandya, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****18/07/2017****(1)** The is claimants' appeal under Section 173 of the Motor

Vehicles Act, 1988 (henceforth 'the Act, 1988') seeking enhancement of the compensation granted under award dated 22.01.2016 passed by 1st Additional Motor Accident Claims Tribunal, Durg (henceforth 'the Claims Tribunal') in Claim Case No. 119/2013 as also challenging the finding of the Claims Tribunal with regard to contributory negligence on the part of their son Mohammad Sharafat Ali.

(2) Learned counsel appearing for the petitioner would submit that the learned Claims Tribunal has committed legal error in holding that the deceased was also contributory negligent to the accident to extent of 50% and thereby deducting 50% from the compensation assessed towards the contributory negligence and awarded compensation of Rs.2,43,000/- along with interest @ 6% per annum in favour of the claimants.

(3) Shri Shivendu Pandya, learned counsel appearing for respondent No. 3/Insurance Company would support the impugned award and oppose the appeal.

(4) I have heard and considered the rival submissions and have perused the record of the claim case.

(5) It is well settled that a party taking plea with regard to contributory negligence on the part of the victim must lead evidence with regard thereto and unless such evidence is led by the party, the plea with regard to the contributory negligence cannot succeed. The party must state specifically that there was some causal connection of the deceased with the damage suffered by it to hold that the conduct of the deceased amounted to contributory negligence. Similarly, there had to be some connection on the part of the deceased showing absence of reasonable care for his own safety which contributed to

the damage.

(6) In the “Law of Torts” by Justice G.P. Singh, the following propositions of law regarding contributory negligence have been stated:

“It is to be noted that negligence of the plaintiff which can be described as contributory negligence must have casual connection with the damage suffered by him.”

“The question simply is whether the plaintiff or the deceased (in case of claims arising out of death) had failed to take reasonable care or his own safety which had contributed to the damage.”

(7) In **Municipal Corporation of Greater Bombay Vs. Shri Laxman Iyer and another**¹, the Supreme Court held as under:

“6.....Where an accident is due to negligence of both parties, substantially there would be contributory negligence the crucial question on which liability depends would be whether either party could, by exercise of reasonable care, have avoided the consequence of other's whichever party could have avoided the consequence of other's would be liable for the accident. If a person's negligent act or omission was the proximate and immediate cause of death, the fact that the person suffering injury was himself negligent and also contributed to the accident or other circumstances by which the injury was caused would not afford a defence to the other. Contributory negligence is applicable solely to the conduct of a plaintiff. It means that there has been an act or omission on the part of the plaintiff which has materially contributed to the damage, the act or omission being of such a nature that it may properly be described as negligence, although negligence is not given its usual meaning. (See Charles worth on Negligence, 3rd Edn. Page 328). It is now well settled that in the case of

¹AIR 2003 SC 4182: (2003) 8 SCC 731

contributory negligence, Courts have power to apportion the loss between the parties as seems just and equitable. Apportionment in that context means that damages are reduced to such an extent as the Court thinks just and equitable having regard to the claim shared in the responsibility for the damage. But in a case where there has been no contributory negligence on the part of the victim, the question of apportionment does not arise.”

(8) In **Pramodkumar Rasikbhai Jhavei Vs. Karmasey Kunvargi**

Tak and others², the Supreme Court held as under:

“8. We do not think that these two reasons given by the High Court fully justify the accepted principles of contributory negligence. The question of contributory negligence arises when there has been some act or omission on the claimant’s part, which has materially contributed to the damage caused, and is of such a nature that it may properly be described as ‘negligence’. Negligence ordinarily means breach of a legal duty to care, but when used in the expression “contributory negligence” it does not mean breach of any duty. It only means the failure by a person to use reasonable care for the safety of either himself or his property, so that he becomes blameworthy in part as an “author of his own wrong”.

9. Subject to non-requirement of the existence of duty, the question of contributory negligence is to be decided on the same principle on which the question of defendant’s negligence is decided. The standard of reasonable man is as relevant in the case of plaintiff’s contributory negligence as in the case of defendant’s negligence. But the degree of want of care which will constitute contributory negligence, varies with the circumstances and the factual situation of the case. The following observation of the High Court of Australia in

² (2002) 6 SCC 455

Astley Vs. Austrust Ltd. (1999) 73 ALJR 403 is worthy of quoting:

“A finding of contributory negligence turns on a factual investigation whether the plaintiff contributed to his or her own loss by failing to take reasonable care of his or her person or property. What is reasonable care depends on the circumstances of the case. In many cases, it may be proper for a plaintiff to rely on the defendant to perform its duty. But there is no absolute rule. The duties and responsibilities of the defendant are a variable factor in determining whether contributory negligence exists and, if so, to what degree. In some cases, the nature of the duty may reduce the plaintiff's share of responsibility for the damage suffered; and in yet other cases the nature of the duty may not prevent a finding that the plaintiff failed to take reasonable care for the safety of his or her person or property. Contributory negligence focuses on the conduct of the plaintiff. The duty owed by the defendant, although relevant, is one only of many factors that must be weighed in determining whether the plaintiff has so conducted itself that it failed to take reasonable care for the safety of its person or property.

(9) In a recent decision in Minu Rout and another vs. Satya Pradyumna Mohapatra and others³, the plea of contributory negligence was taken by the Insurance Company but, not independent witness was examined to prove the allegation of contributory negligence. The Supreme Court, while setting aside the finding of contributory negligence, held as under:

“12.....The Tribunal ought to have seen that non production of FIR has no consequence for the reason that charge sheet was filed against the truck driver for the offences punishable under Sections 279 read with Section 302 of IPC read with the provisions of the M.V.

3 2013 AIR SCW 5375

Act. The Insurance Company, though claimed permission under Section 170(b) of the Motor Vehicles Act, 1988 from the Tribunal to contest the proceedings by availing the defence of the owner of the offending vehicle, it did not choose to examine either the driver of the truck or any other independent eye witness to prove the allegation of contributory negligence on the part of the deceased Susil Rout on account of which the accident took place as he was driving the car in a rash and negligent manner. In the absence of rebuttal evidence adduced on record by the Tribunal, the Tribunal should not have placed reliance on the charge-sheet Exh. 1 in which the deceased driver was mentioned as an accused and on his death; his name was deleted from the charge sheet. The Tribunal has referred to certain stray answers elicited from the evidence of PW 2 and PW3 in their cross-examination and placed reliance on them to record the finding on issue No.1. For the aforesaid reasons, the findings and reasons recorded by the Tribunal on the contentious issue No.1 holding that there is contributory negligence on the part of the deceased driver in the absence of legal evidence adduced by the Insurance Company to prove the plea taken by it that accident did not take place on account of rash and negligence driving of the truck driver is erroneous in law.”

(10) Thus, applying the ratio of law laid down by the Supreme Court in the aforesaid cases, I arrive at a conclusion that the finding that deceased Mohammad Sharafat Ali was contributory negligent for the accident to the extent of 50% is erroneous for want of proper pleadings and evidence and, therefore, I hereby set aside the said finding.

(11) Accordingly, the findings recorded by the Tribunal regarding 50 percent deduction from the compensation awarded to the claimants on account of contributory negligence on the part of their son Mohammad Sharafat Ali (since deceased) is set aside and the appellants are entitled for entire compensation awarded by the Tribunal i.e. Rs. 4,86,000-. The enhanced amount of compensation i.e. Rs. 2,43,000/- shall carry interest @ 6 percent per annum from the date of filing of claim petition till its actual payment. Award is modified to the above extent. Rest of the conditions mentioned in the award shall remain unchanged.

(12) Consequently, the appeal is allowed in part to the extent indicated above. No order as to costs.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-