

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 405 of 2017**

- Ghanshyam Sen S/o Shri Suryabhan Sen, Aged About 28 Years R/o Ward No.3, Fockat Para, Devkar, P.S. & Tahsil Saja, District Bemetara, Chhattisgarh(Claimant)

---- Appellant

Versus

1. Lalit Kumar S/o Dhaniram Sahu, Aged About 53 Years R/o Ward No.56, Urla, P.S. Pulgaon, Tahsil & District Durg, Chhattisgarh(Driver)
2. M/s Inter State Trade And Transport, O/o Near Parmanand Building, Rajendra Park Chowk, G.E.Road, Durg, P.S. Durg, Tahsil & District Durg, Chhattisgarh(Owner)
3. Divisional Manager, The Oriental Insurance Co. Ltd., Near Rajendra Chowk, G.E.Road, Durg, P.S. Durg, Tahsil & District Durg, Chhattisgarh

---- Respondents

For Appellant	:	Shri Utsav Maheshwar, Advocate
For Respondent No.3	:	Shri Ghanshyam Patel, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****25/07/2017**

1. The present is a claimant's appeal under Section 173 of the Motor Vehicle Act, 1988 (for short 'the Act, 1988') seeking for enhancement of the compensation awarded by the Tribunal on 03.10.2016 by the IV Additional Motor Accident Claim Tribunal, Durg in claim case No.00000023/2016.
2. Since the factual details of the case are admitted so far as the accident which was sustained by the appellant on 02.06.2015, where the appellant, who was driving on a motorcycle bearing registration No.CG 07/LW/3896 was dashed by a mini bus bearing registration No.CG 07/E/0480 sustained

the grievous injuries and was even hospitalized for a considerable period of time. Subsequently, the appellant has filed the claim case under section 166 of the Act, 1988. The Tribunal taking into consideration the evidence and other documentary evidence of the case reached to the conclusion that the amount of compensation payable to the appellant was Rs.97500/-, however, the Tribunal held that there was also a contributory negligence on the part of the appellant and therefore deducted 55% of the said awarded amount and assessed the compensation payable to the appellant at Rs.48750/- with interest @ 6% per annum from the date of application.

3. It is this award which is under challenge by the claimant.
4. The contention of the counsel for the appellant is that the finding of the Tribunal to the extent of there being a contributory negligence is without any basis and the compensation withheld by the Tribunal for contributory negligence is without there being any cogent proof or evidence in this regard. The said finding has been arrived only on the basis of the cross-examination of the claimant before the Tribunal. He further submits that even if the cross-examination is accepted as it is even then the finding arrived at by the Tribunal could not be certain to reach to the conclusion that there was a contributory negligence and prays for setting aside of the finding of contributory negligence against the appellant.
5. Counsel for the Insurance company however opposes the appeal and submits that the finding arrived at by the Tribunal is only on the basis of evidence which have come before the Tribunal, therefore, there is no scope of interference by this Court and the appeal may be rejected.
6. Having considered the rival contentions on either side on perusal of the record what is to be seen is that whether the finding arrived at by the

Tribunal in para 8 of its judgment holding that there is a contributory negligence on the part of the appellant is concerned is proper, legal and justified or not. If we read the cross-examination of the appellant and the question which were asked to the appellant, all that suggest is a head on collision that cannot be a conclusion by itself for drawing an inference that there was a contributory negligence on the part of the appellant. The Tribunal has not considered the aspect whether there was sufficient time to avoid the accident or not, on the part of the appellant. The plain reading of the evidence which has been construed by the Tribunal passing the contributory negligence can also be in a situation where the mini bus could have crossed the side of the road and might have head on collided with the appellant without giving any chance of avoiding the accident. For the said reasons the finding of the Tribunal deserves to be and is accordingly set aside and it is held that there was no contributory negligence in the accident and the accident did occur on account of rash and negligent driving on the part of the driver of the offending mini bus. In view of the same the appellant shall be entitled for the entire amount of compensation awarded of Rs.97500/- as awarded by the Tribunal in para 19 of its judgment. It shall be the liability of the insurance company to indemnify the owner and driver of the offending vehicle and pay the compensation part.

7. In view of the above, the appeal stands allowed and disposed of.

Sd/-

P.Sam Koshy

Judge

Ashu