

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 503 OF 2017

Naveen Kumar Gupta, S/o Late Shyamlal Gupta, aged about 37 years (real Vehicle Owner), Caste- Rauniyar, R/o Village- Batauli, Tahsil and P.S. Batauli, District Surguja (C.G.)

... Appellant

versus

1. Taj Ahmed Julaha @ Taj Ahmed Ansari, S/o Mohd. Nizamuddin, aged about 32, by occupation- Service, R/o Village- Lamgaon (Karmipara), Post Lamgaon, P.S. Batauli, District Surguja (C.G.)
2. Shiv Shankar Sonwani @ Chullu, S/o Anand Ram Sonwani, occupation- Driver, aged about 29 years, R/o Village- Bhatko, P.S. Batauli, District Surguja (C.G.)
3. Manoj Gupta, S/o Chamari Sao Rauniar, aged about 42 years, R/o Village- Kotba, Tahsil- Pathalgaon, District Jashpur (C.G.)

... Respondents

MISC. APPEAL (C) NO. 908 OF 2017

Taj Ahmad Julaha @ Taj Ahmad Ansari, S/o Mohd. Nizamuddin, aged about 30 years, occupation- Service, R/o Village- Lamgaon (Karmipara), Post Lamgaon, P.S. Batouli, District Surguja (C.G.)

... Appellant

versus

1. Shiv Shankar Sonwani @ Chulu, S/o Anand Ram Sonwani, occupation- Driver, aged about 27 years, R/o Village- Bhatko, P.S. Batouli, District Surguja (C.G.)
2. Manoj Gupta, S/o Chmari Sao Roniyar, aged about 40 years, occupation- registered owner, R/o Village- Kotba, Tahsil- Pathalgaon, District Jashpur (C.G.)
3. Naveen Kumar Gupta, S/o Late Shyamlal Gupta, aged about 35 years, original owner of vehicle, Caste- Roniyar, R/o Village- Batouli, in front of Police Station, District Surguja (C.G.)

... Respondents

- Mr. Mahavir Bhatnagar, Advocate, for the Appellant/Owner in M.A. (C) No.503/2017 and for Respondent No.3/Owner in M.A.(C) No.908/2017.
- Mr. A.N. Pandey, Advocate, for the Appellant/Claimant in M.A.(C) No.908/2017 and for Respondent No.1/Claimant in M.A.(C) No.503/2017.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

11/12/2017

1. The present two appeals under Section 173 of the Motor Vehicles Act, 1988, arise out of the same award dated 3.3.2017 passed by the First Additional Motor Accident Claims Tribunal, Ambikapur, District Surguja, in Motor Accident Claim Case No. 941/2013.

2. Vide the impugned award, the learned Tribunal, in an injury case, under Section 166 of the Motor Vehicles Act, has awarded a compensation of Rs.4,49,041/- to the claimant-Taj Ahmad Julaha with interest thereon at the rate of 7% per annum from the date of claim application and has fastened the liability for payment of compensation upon Naveen Kumar Gupta/owner of the offending vehicle i.e. a Jeep, bearing registration No. CG13-ZD-0407.

3. M.A.(C) No. 503/2017 is an appeal filed by the owner-Naveen Kumar Gupta assailing the liability which has been fastened upon him and M.A.(C) No. 908/2017 is an appeal filed by the claimant-Taj Ahmad Julaha seeking enhancement of the compensation awarded.

4. Brief facts of the case are that on 15.11.2012 the injured claimant in the instant case i.e. Taj Ahmad Julaha while going on his motorcycle bearing registration no. CG15-E-7698 was hit by a Jeep bearing registration No. CG13-ZD-0407 which was coming from the opposite direction. As a result of the said accident, the claimant received multiple injuries on his right leg which ultimately had to be amputated below the knee.

5. The learned Tribunal has assessed the disability at 65% on the basis of which compensation has been awarded.

6. While passing the award, the learned Tribunal has directed the payment of compensation to be made by the owner-Naveen Kumar Gupta.

7. So far as M.A.(C) No.503/2017 is concerned, Shri Mahavir Bhatnagar, learned counsel appearing for owner-Naveen Kumar Gupta, submits that the liability fastened upon Naveen Kumar Gupta is erroneous, inasmuch as he was not the registered owner of the offending vehicle and the registered owner of the offending vehicle was one Manoj Gupta and

therefore the liability should have been fastened upon the registered owner of the offending vehicle. He further submits that the award also is bad in law to the extent that the Tribunal ought to have fastened the liability for payment of compensation jointly and severally upon the driver as well as upon the owner of the offending vehicle, but, in the instant case, the driver- Shiv Shankar Sonwani seems to have been wrongly exonerated of its liability and the entire liability has been fastened upon Naveen Kumar Gupta, the present appellant. He also submits that the disability percentage provided in the instant case is also on the higher side as the medical board has assessed the disability of the claimant at 35% and therefore the compensation awarded deserves for a suitable modification. He next submits that there is an element of contributory negligence also on the part of the claimant, inasmuch as there is a head on collision which took place and, therefore, since there was a head on collision the Tribunal should have assessed contributory negligence on the part of the claimant also and the compensation should have been suitably apportioned.

8. Shri A.N. Pandey, learned counsel appearing for claimant-Taj Ahmad Julaha, however, opposing the appeal of owner-Naveen Kumar Gupta, submits that the appeal of the owner being devoid of merits the same deserves to be rejected and, on the contrary he submits that the claimant himself has filed an appeal seeking enhancement of compensation and therefore the award deserves for a suitable enhancement.

9. So far as the appeal of the owner-Naveen Kumar Gupta i.e. M.A.(C) No.503/2017 is concerned, on a query being put to the learned counsel for the appellant-owner he fairly submits that admittedly the registered owner in the instant case is one Manoj Gupta, however, the vehicle with the consent and permission of Manoj Gupta was handed over to the present

appellant-Naveen Kumar Gupta for operation and that he was in possession and control of the offending vehicle at the time of the accident.

10. At this point, it would be relevant to refer to a decision of the Hon'ble Supreme Court in the case of **Rajasthan State Road Transport Corporation v. Kailash Nath Kothari & Others, 1997 (7) SCC 481**, where the Hon'ble Supreme Court in paragraph 17 has held as follows:-

“**17.** ...If the original employer is able to establish that when the servant was lent, the effective control over him was also transferred to the hirer, the original owner can avoid his liability and the temporary employer or the hirer, as the same may be, must be held vicariously liable for the tort committed by the employee concerned in the course of his employment while under the command and control of the hirer notwithstanding the fact that the driver would continue to be on the payroll of the original owner...”

11. In the light of the aforesaid judgment of the Hon'ble Supreme Court, the contention of appellant-Naveen Kumar Gupta of his being the owner of the offending vehicle does not have strong force for interfering with the impugned finding of the Tribunal and the same thus stands negated.

12. So far as disability part is concerned, the undisputed fact is that the injury sustained by the claimant was an amputation of his right leg below the knee. Though the medical board has opined the disability at 35%, but if we go by the Schedule contained in the Employees Compensation Act, amputation below knee with stump not exceeding 12.7cm, the percentage of disability for assessing loss of earning capacity assessed is at 50%. If that be so, taking into consideration the overall functional disability which the claimant has suffered because of the injury caused, this Court does not find the assessment of 65% by the Tribunal to be erroneous or bad in law.

13. As far as the contributory negligence is concerned, this Court does not find any strong case made out by the appellant-Naveen Kumar Gupta, as there is no evidence which has been brought on record with which it

can be said that that the claimant in the instant case had crossed the side of the road when the accident occurred or at least he was driving the motorcycle at the centre of the road with which there could be an element of contributory negligence which could be presumed. On the contrary, the finding is that the driver of the offending vehicle had crossed the side of the road and had hit the motorcycle which was travelling on the left side of the road. Thus, the ground of contributory negligence raised by the appellant-Naveen Kumar Gupta also deserves to be rejected.

14. Given the facts, this Court does not find any strong case made by the appellant-Naveen Kumar Gupta for interference with the impugned award and the appeal of Naveen Kumar Gupta i.e. M.A.(C) No.503/2017 stands rejected.

15. However, this Court is of the opinion that the payment of compensation would always be jointly and severally upon the owner and the driver of the offending vehicle. In the instant case, Shiv Shankar Sonwani was the driver of the offending vehicle and that there is no reason assigned by the Tribunal for not fastening the liability jointly and severally upon the driver and the owner of the offending vehicle. The award thus stands modified to the extent, that the payment of compensation shall be made jointly and severally by the owner-Naveen Kumar Gupta as well as the driver-Shiv Shankar Sonwani.

16. So far as the appeal of the claimant-Taj Ahmad Julaha i.e. M.A.(C) No.908/2017 seeking for enhancement of compensation is concerned, the date of accident is of November, 2012 and the income assessed by the Tribunal is at Rs.4000/- per month. That the claimant has not been able to adduce any strong material to show that he was earning much more than that has been assessed by the Tribunal. In the absence of any strong

material on the part of the claimant, the income assessed by the Tribunal at Rs.4000/- a month cannot be found fault with and if the compensation has been calculated on the basis of the assessment of income at Rs.4000/- a month, the same cannot be said to be on the lower side. The appeal of the claimant-Taj Amhand Julaha thus deserves to be and is accordingly rejected.

17. As a consequence, M.A.(C) No.503/2017 i.e. the appeal of owner-Naveen Kumar Gupta stands dismissed with the aforesaid observation. M.A.(C) No.908/2017 i.e. the appeal of the claimant-Taj Ahmad Julaha, also stands dismissed.

Sd/-
(P. Sam Koshy)
Judge