

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No.635 of 2013**

Kishan Kumar Dhurve S/o Bhanu Ram Dhurve Aged About 37 Years R/o Shyampur Chhuikhadan, Post- Chhuikhadan, P.S. Nevai, Distt. Rajnandgaon C.G., Present R/o Maitri Bag Staff Qtr.No. 2, Marouda, Bhilai, PS- Nevai, Distt. Durg C.G.

---- Appellant**Versus**

1. Chain Kumar Yadav S/o Manglu Ram Yadav Aged About 23 Years R/o Ghasidas Nagar, Bhilai, P.S. Jamul, Tah. And Distt. Durg C.G.
2. Rajkumar Rai S/o Nanduram Aged About 36 Years R/o Qtr. No. E.W.S. 1492, Housing Board Colony, Jamul, Bhilai, Thana- Jamul, Tah. And Distt. Durg C.G.
3. The Reliance General Insurance Anil Dhirubhai Ambani Group, Branch Office- Shop No. 412/413, 4th Floor, Ravi Bhawan, Jai Stambh Chowk, Raipur C.G.

---- Respondents

For Appellant	:	Shri C.R. Sahu, Advocate.
For Respondent No.3.	:	Shri Saurabh Sharma, Advocate.

Hon'ble Shri Justice Parth Prateem Sahu
CAV Order

26.11.2018

1. By the instant appeal, the appellant/claimant is challenging the legality and validity of the impugned award dated 23.01.2013 passed by the 3rd Additional Motor Accident Claims Tribunal, Durg, C.G (in short, 'Claims Tribunal') in Claim Case No.304 of 2011, whereby the learned Claims Tribunal awarded Rs.1,83,750/- in total under all the heads.
2. Brief facts of this case are that on 20.09.2007 at about 08.00 p.m. the appellant alongwith his friend namely – Santram Thakur was going from Raipur to Shyampur, Chhuikhadan (between Durg-Jalbhand Road) on his motorcycle bearing registration No.C.G.07/5204 and when they reached near Nagpura Bus Stand, one Indica car bearing registration No.C.G.07/3326 dashed against the appellant's motorcycle as a result of

which appellant sustained grievous injuries on his right thigh, left ankle and other parts of the body. The appellant was taken to Sector-9 Hospital, Bhilai where he remained admitted between 20.09.2007 & 31.10.2007 and got treated his injuries. The accident was reported to the Police Station Pulgaon, District Durg and after completion of investigation, charge-sheet has been filed against respondent No.1.

3. For the reasons, stated above, the appellant filed claim application claiming compensation of Rs. 16,26,900 /- under various heads.
4. Respondent Nos. 1 & 2, who are driver and owner of the offending vehicle, submitted their reply and denied all the adverse pleadings made in the claim application including the fact of accident. They have further stated that the appellant met with an accident due to his own negligence. It has further been pleaded that as the accident of the Indica car and the motorcycle was head on collision between the two, therefore, the appellant was also contributory negligent to the accident, but the insurance company of the said vehicle i.e. motorcycle has not been arrayed as respondent.
5. Respondent No.3- Insurance Company submitted its reply and denied all the pleadings with respect to manner of accident. It has been contended that the accident took place on account of negligence on part of the appellant himself. It has been further pleaded that disability certificate has not been produced and on the date of accident, driver of the offending vehicle was not having valid and effective driving license,

therefore, there was violation of conditions of insurance policy and prayed for its exoneration from payment of compensation, if any.

6. Learned Claims Tribunal after considering the pleadings and evidence of respective parties and also the evidence adduced before the learned Claims Tribunal arrived at a conclusion that there was contributory negligence to the extent of 25% on the part of the appellant (driver of the motorcycle), and held that the appellant sustained permanent disability due to bone injury and considering the fact that the appellant has to undergo medical treatment for long period, the Claims Tribunal has calculated sum of Rs.2,45,000/-, in total, including Rs.1,60,000/- towards medical expenditure and held respondent No.3 Insurance company liable to make payment of compensation. After deducting 25% of the amount of compensation calculated on account of contributory negligence of appellant awarded a sum of Rs.1,83,750/-.
7. It is this award passed by the learned Claims Tribunal is under challenged before this Court.
8. Learned counsel appearing for the appellant raises only one ground that learned Claims Tribunal committed error in holding that the appellant is also contributory negligent for the accident without there being any cogent material and evidence available on record to this effect but for the fact that there was head-on collision between the two vehicles i.e Indica car and the Motorcycle.
9. Per contra, learned counsel appearing for Respondent No.3/Insurance Company supports the award and argued that the learned Claims

Tribunal after considering the material and evidence has awarded reasonable amount of compensation to the appellant.

10. I have heard learned respective counsels appearing for the parties and perused the records.

11. On perusal of the records, it would reveal that the learned Claims Tribunal while holding the appellant to be contributory negligent has only considered that there was head on collision between the two motor vehicles and if the appellant himself had taken due precaution, he could have avoided the accident and by observing that held the appellant contributory negligent to the extent of 25%.

12. The issue of contributory negligence has been considered by Hon'ble Apex Court in number of cases and the Hon'ble Supreme Court in the matter of **Minu Rout and Anr. Versus Satya Pradyumna Mahapatra & Ors** reported in **2013 10 SCC 695**, wherein one of the issue is with regard to the contributory negligence held as under -:

“17. The Tribunal, on appreciation of the oral and documentary evidence, has recorded the erroneous finding by placing strong reliance upon the charge- sheet, Ext.1 without considering the fact that the criminal case was abated against the deceased and further has made observation in the judgment that the appellants had not produced the FIR. Therefore, it has held that there was 50% contributory negligence on the part of the deceased driver in causing accident. 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 IPC read with the provisions of the M. V. 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, Ext.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 P.W.2 and P.W.3 in their cross-examination and placed reliance on them to record the finding on issue 1.”

13. Hon'ble Supreme Court in another judgment between **Jiju Kuruvila Versus Kunjamma Mohan** reported in **(2013) 9 SCC 166** held as under :-

“20.05. The mere position of the vehicles after accident, as shown in a scene mahazar, cannot give a substantial proof as to the rash and negligent driving on the part of one or the other. When two vehicles coming from opposite directions collide, the position of the vehicles and its direction, etc. depends on a number of factors like the speed of vehicles, intensity of collision, reason for collision, place at which one vehicle hit the other, etc. From the scene of the accident, one may suggest or presume the manner in which the accident was caused, but in the absence of any direct or corroborative evidence, no conclusion can be drawn as to whether there was negligence on part of the driver. In absence of such direct or corroborative evidence, the Court cannot give any specific finding about negligence on the part of any individual”

14. In the light of the aforementioned dictum of the Hon'ble Supreme Court, if we consider the facts, circumstances and material available on record of the case in hand, it would show that there is no material and evidence brought by respondent on record showing appellant to be contributory negligent in any manner.
15. Respondent Nos. 1 & 2 have not led any evidence with regard to the contributory negligence, therefore, findings of the contributory negligence cannot be arrived. The fact of the contributory negligence is to be proved by placing cogent and reliable piece of evidence and that too by the driver of the vehicle or any other eyewitness, but unfortunately that is not available on record.

16. From perusal of the law laid down by the Hon'ble Supreme Court, it is clear that to prove the contributory negligence of any one of the drivers of the vehicles, specific and cogent material and evidence is to be placed on record by the party raising the plea of contributory negligence. Even respondent No.1 driver of the offending vehicle has not entered into witness box to prove the fact of contributory negligence.

17. In view of the above discussions, I find that the finding recorded by the learned Claims Tribunal with respect to holding the appellant to be contributory negligent to the extent of 25% is erroneous as there is no cogent and reliable piece of evidence on record to this effect.

18. For the aforementioned reason, the said finding with respect to the contributory negligence of the appellant to the extent of 25% is liable to be and is hereby set aside.

19. In view of the above, now the appellant is entitled for the entire amount of compensation as calculated by the learned Claims Tribunal i.e. Rs.2,45,000/- along with interest at the rate of 7.5% as awarded by the Tribunal. The other conditions will remain intact.

20. In the result, the appeal is allowed in part and the award impugned stands modified to the extent indicated herein above.

Sd/-
(Parth Prateem Sahu)

Judge