

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**M. A. (C) No. 268 OF 2012**

Himanshu Surojiya S/o Shri Kankaram Surojiya, aged about 26 years, R/o Hospital Ward, Village Shyampur, Tahsil Kondagaon, District Bastar (C.G.)

---- Appellant**Versus**

1. Kondad Pande S/o Shri Ratnakar Pande, aged about 28 years, R/o Bramhan Para Village Pithapur, P.S. Bakawand District Bastar (C.G.).
(Driver of the vehicle)
2. Manjeet Singh S/o Shri Surjan Singh R/o Village Farshagaon District Bastar (C.G.)
(Owner of the Vehicle)
3. The United Insurance Company Limited, Through Branch Manage, Anupama Chowk, Jagdalpur, District Bastar (C.G.)

---- Respondents

For Appellant	: Mr. Pravin Kumar Tulsyan, Advocate.
For Respondent No. 3	: Mr. Dashrath Gupta, Advocate.

Hon'ble Shri Justice Parth Prateem Sahu**Judgment On Board****20/06/2018**

1. By the instant appeal, the appellant/claimant is challenging the legality and propriety of the impugned award dated 29/10/2011 passed by the First Additional Motor Accident Claims Tribunal, Bastar at Jagdalpur (C.G.) (in short 'Claims Tribunal') in Claim Case No. 11/2010.
2. The appellant/claimant has filed this appeal seeking enhancement of amount under award as well as also challenging the finding of the contributory negligence.
3. The brief facts of the case, are that, on 19/12/2008, the appellant/claimant was travelling on motorcycle bearing No. C.G.17-B-8859 along with one Raju Thakur and returning towards his village on National Highway No. 43. When they

reached near Rojgaripara, at that relevant time, the Jeep bearing No. C.G.17/ZD-0356 driven by respondent No.1 (hereinafter called as 'offending vehicle') which was coming from Raipur towards Kondagaon dashed the motorcycle by rash and negligent driving, as a result of which, the appellant/claimant sustained grievous injuries on his head, chest and other parts of the body. His right leg got badly injured and he was admitted to Yashwant Hospital, Raipur where he undergone treatment from 20/12/2008 to 01/02/2009. Looking to the serious injury sustained over the right leg, his leg was amputated below the knee and he sustained 70% permanent disability on his right leg. Thereafter, he filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'M.V. Act') claiming compensation of Rs.20,82,000/-.

4. The respondent Nos. 1 & 2 did not choose to appear and was proceeded ex parte. Respondent No.3/Insurance Company submitted its reply and stated that motorcycle driven without license and accident occurred due to negligent act of claimant himself. The other formal defence was also taken that the driver of the Jeep was not holding valid and effective driving license. Further that the accident was a result of contributory negligence of drivers of both vehicles.

5. The Claims Tribunal after appreciation of evidence on record, partly allowed the claim by holding that the appellant was contributory negligent to the extent of 30% and by the impugned award granted a total compensation of Rs.3,66,238/- in favour of the claimant along with interest @ 6% p.a. from the date of application till realization on the following heads. The calculation made by the learned Claims Tribunal is given below:-

1.	Towards physical and mental agony	:	Rs.10,000/-
2.	Towards loss of amenities and enjoyment of life	:	Rs.5,000/-
3.	Towards special diet	:	Rs.2,000/-

4.	Towards medical expenses	:	Rs.74,798/-
5.	Towards conveyance	:	Rs.3,000/-
6.	Towards loss of future income	:	Rs.4,28,400/-
	Total	:	Rs.5,23,198/-
7.	After deducting 30% towards contributory negligence	:	Rs.3,66,238/-

6. The learned counsel appearing for the appellant/claimant submits that the compensation awarded by the Claims Tribunal is very much on the lower side and is required to be enhanced suitably for the following reasons:-

- (i) that the Claims Tribunal has fallen into error by holding that the appellant/claimant was contributory negligent in the accident to the extent of 30% and the finding recorded by the Claims Tribunal with respect to the contributory negligence is liable to be set aside.
- (ii) that the Claims Tribunal has awarded meager amount towards special diet and inadequate and it needs to be enhanced suitably.
- (iii) that the Claims Tribunal failed to consider that though the appellant was admitted to the hospital for about more than 1½ months but no amount has been awarded towards loss of income during laid down period and no amount is awarded towards the future prospects. Therefore, he is entitled for a suitable compensation under these conventional heads.

7. The learned counsel appearing for the Insurance Company/respondent No. 3 submits that the finding recorded by the Claims Tribunal is based on evidence available on record. The accident occurred due to rash and negligent driving of the appellant/claimant as well as respondent No.1, therefore, the contributory negligence on the part of the appellant/claimant must be presumed. He further submits that looking to the evidence adduced by the parties before the

Claims Tribunal, the compensation awarded by the Claims Tribunal is just and proper and requires no further enhancement.

8. I have heard the learned counsel appearing for the parties, considered their rival submissions and have perused the records of the Claims Tribunal.

9. While considering the finding recorded by the learned Claims Tribunal with regard to the contributory negligence, it would reveal that the Claims Tribunal had only considered that there was head on collusion between the two vehicles and therefore, definitely there is contributory negligence on the part of the appellant. The Claims Tribunal also recorded a finding that looking to the nature of the vehicle driven by the appellant and the offending vehicle, the ratio has been fixed as 30% negligence on the part of the appellant and 70% negligence on the part of the driver of the Jeep i.e. four-wheeler.

10. The appellant/claimant has examined himself as (AW-1) and one Dr. V.K. Jha has examined as (AW-2). The appellant had placed on record the final report of Crime No. 322/2008 for the offence punishable under Sections 279, 337 and 338 IPC, (Ex. P-5) which was registered against respondent No. 1 herein. The Insurance Company had not led any evidence before the Claims Tribunal with regard to the averments of contributory negligence in its reply to the application filed under Section 166 of the M.V. Act by the appellant/claimant.

11. The Hon'ble Supreme Court while dealing with the issue of contributory negligence in the decision of ***Minu Rout & Anr. v. Satya Pradyumna Mohapatra & Ors., 2013 AIR SCW 5375***, dealt with the plea of contributory negligence taken by Insurance Company where neither the driver nor any 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. 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 negligent driving of the truck driver is erroneous in law.”

12. In case of ***Jiju Kuruvila and others v. Kunjamma Mohan and others***, (2013) 9 SCC 166, the Hon'ble Supreme Court has held as under:-

“20.5 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 the 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.”

13. In the light of the aforementioned law laid down in the matters of ***Minu Rout (supra)*** and ***Jiju Kuruvila (supra)***, if the facts and circumstances of the present case is considered, it is evident that though the general plea of contributory negligence was taken by the Insurance Company but the Insurance Company has not examined either driver of the offending vehicle/respondent No. 1 in the witness box or not made any effort to bring any independent witness to establish the plea of contributory negligence on the part of the appellant. The findings of contributory negligence are based on only presumption. Therefore, the finding recorded by the Claims Tribunal that the appellant was contributory negligent to the extent of 30% is erroneous in law and the finding with regard to the contributory negligence arrived at by the learned Claims Tribunal is hereby set aside.

14. Coming to the other plea with regard to the non-awarding of future prospects to the appellant, the learned counsel appearing for the appellant argued that on the date of accident, the appellant was aged about 27 years and his right leg was amputated in a very young age below the knee and therefore, the learned Claims Tribunal ought to have awarded the compensation towards future prospects. He placed reliance on the judgment rendered by the Hon'ble Supreme Court in ***National Insurance Company Limited v. Pranay Sethi and***

others, AIR 2017 SC 5157, in which the Hon'ble Supreme Court has held as follows:-

“61. (iv) In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.”

15. In the light of the above judgment, if the case in hand is considered, it is apparent that the appellant has examined the doctor as (AW-2), who has categorically stated in his evidence that during the period of treatment between 20/12/2008 to 01/02/2009, the appellant undergone for operation twice and ultimately his right leg was amputated and on that count, he had suffered with 70% of permanent disability. The appellant had also produced disability certificate vide Ex. P-6 issued by the Maharani Hospital, Jagdalpur showing that the appellant/claimant has sustained 70% disability. Neither the Insurance Company had controverted by putting any specific question to Dr. V.K. Jha (AW-2) with regard to the disability on the part stated by him nor put any question challenging the legality and admissibility of the document Ex. P-6 (disability certificate). Therefore, from the record, it is apparent that the appellant/claimant has sustained 70% permanent disability, which was also held by the Claims Tribunal. The Claims Tribunal though arrived at conclusion that the appellant/claimant had sustained permanent disability to the extent of 70% on account of amputation of his right leg but the Claims Tribunal had not considered that disability will also affect the future earnings in his life on the ground that the appellant can take recourse to the artificial leg.

16. Section 168 of the M.V. Act deals with concept of 'just compensation' and the same has to be determined on the foundation of fairness, reasonableness and equitable on acceptable legal standard. The assessment of loss of income towards future prospects cannot be applied as straight jacket formula but to be applied considering the facts and circumstances of each case minutely. In injury case many factors is to be considered those are (a) percentage of disability, (b) nature of work, and (c) part of the body where disability occurred.

17. In the case in hand, the appellant/claimant is employed with a private contractor on fixed salary. The employee working with the contractor have to visit site and also make movement regularly for several purpose to different offices as part of his employment. The appellant's employment is not a permanent one and he might have to change the employer who while employing will assess his fitness also and many of them may also not find him fit for the particular job/work which will reduce the chances and choice of employment. Definitely, this will cause loss in earning in his future life. For the reasons stated above and considering the principles of the 'just compensation', the appellant/claimant is entitled to 15% of the established income towards loss of future prospects.

18. The Claims Tribunal has very meagerly awarded compensation towards pain & suffering and loss of amenities as well as towards special diet, therefore, considering all these things, in the considered opinion of this Court, the appropriate compensation is to be awarded to the appellant. For the reasons stated above, the amount of compensation to be awarded to appellant/claimant is recalculated as under :-

The learned Claims Tribunal taken the income of the appellant as Rs.3,000/- per month and by adding 15% towards loss of future prospects, the monthly income of the appellant would be assessed as Rs.3,450/- and yearly income would be Rs.41,400/-. At the time of accident the appellant/claimant was

aged about 27 years, multiplier of 17 would be applicable in the present case. After applying the multiplier of 17, the total loss of income comes to (41,400/- x 17) Rs.7,03,800/-. As the learned Claims Tribunal held that the appellant/claimant sustained 70% permanent disability and from the aforesaid loss of income, he is entitled for 70% i.e. 7,03,800 x 70%, which comes to Rs.4,92,660/- towards loss of future income. In addition to the aforesaid amount of compensation, the appellant/claimant is also entitled to Rs.40,000/- towards physical and mental agony, Rs.15,000/- towards loss of amenities and enjoyment of life, Rs.5,000/- towards special diet, Rs.74,798/- towards medical expenses and also Rs.3,000/- towards conveyance.

19. On the basis of the above calculation award passed by the learned Claims Tribunal is modified accordingly and now the appellant/claimant is held entitled for total compensation of Rs.6,30,458/-. Since the Claims Tribunal has already awarded Rs.3,66,238/-, after deducting the same, the appellant/claimant is entitled for additional compensation to the sum of Rs.2,64,220/-. This additional amount of compensation shall carry interest @ 6% p.a. as awarded by the Claims Tribunal from the date of filing of the claim petition till realization.

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

21. No order as to costs.

Sd/-
(Parth Prateem Sahu)
Judge