

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**MAC No. 580 of 2012**

Remsan Lakda, S/o. Dhanjeet Lakdra, Aged about 45 years, R/o. Village Devideeh, Police Station Dumri, District Gumla (Jharkhand)

---- Appellant**Versus**

1. Pramod Kumar Minj @ Chede S/o. Admon Minj, Aged about 22 years, R/o. Village Glonda, Tahsil Jashpur Nagar, District Jashpur Chhattisgarh
2. Anil Kumar Gupta, Proprietor M/s. Tirupati Transport, R/o. Village and Post Tapkara, Tahsil Kunkuri, District Jashpur Chhattisgarh
3. Narayan Vishwakarma, S/o. Madho Vishwakarma, Aged about 45 years, R/o. Rap Nagar, Police Station and District Gumla (Jharkhand)
4. United India Insurance Company Ltd. Branch Office, Raigarh Chhattisgarh

---- Respondents

For Appellant	:	Mr. Rishikant Mahobia, Advocate under instructions of Mr. A.K. Prasad, Advocate
For Insurance Company	:	Mr. Dashrath Gupta, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****28/02/2018**

1. The present is an appeal by the Owner under Section 173 of the Motor Vehicles Act. Challenge is to the award dated 13.01.2012, passed by the Motor Accident Claims Tribunal, Jashpur, Chhattisgarh, in Motor Accident Claim Case No. 38/2010.
2. Vide the impugned award, the Tribunal in an injury case has awarded a compensation of Rs.1,72,427/- with interest @ 6% per annum from the date of application.
3. While passing the impugned award the Tribunal has assessed the contributory negligence at 50% each on the Drivers of the two vehicles involved in the accident. The fact of the case is that Pramod Kumar Minj was a Driver of a Jeep bearing registration No.

MP/56/C/0021 and that while he was going towards Kunkuri, he was hit by a Bus bearing registration No. CG/14/ZA/0129 owned by the respondent No.2 and driven by the respondent No.3. The Claimant as a result of the accident sustained injuries. Later on he filed a claim application under Section 166 of Motor Vehicles Act seeking compensation for the injury caused.

4. The Tribunal vide the impugned award dated 13.01.2012 found that the accident occurred because of the negligence on the part of the Claimant in the capacity of the Driver of the Jeep and also the respondent No.3 Narayan Vishwakarma the Driver of the offending Bus involved in the accident. The percentage of the negligence on the part of each of the drivers was 50% each. However, the Tribunal while passing the impugned order has ordered for payment of compensation of Rs.1,72,427/- to be shared equally by the present appellant being the Owner of the Jeep and respondent No. 2, 3 & 4 the Driver, Owner and Insurance Company of the Bus involved in the accident.
5. The present appeal is by the Owner of the Jeep, which was being driven by the Claimant himself. The solitary ground of challenge by the appellant-Owner is that since there is a categorical finding that the accident occurred because of the contributory negligence on the part of the two drivers of the two vehicles involved in the accident, the present appellant-Owner should not be saddled with the liability of payment of compensation for the accident which occurred on the fault of the Claimant-Driver himself. He submits that since there is a finding of contributory negligence, the Claimant would only be entitled for the compensation which was to be payable by the Driver,

Owner and the Insurance Company of the opposite vehicle involved in the accident i.e. the Bus in the instant case owned, driven and insured by the respondent No. 2, 3 & 4. None appears for the respondent No.1, 2 & 3 though served.

6. Mr. Dashrath Gupta, Advocate appears on behalf of the respondent No.4-Insurance Company of the Bus, who has satisfied the award to the extent of the liability fastened upon the Bus.
7. Having heard the contentions put forth on either side and on perusal of the record what clearly reflects from the finding of the Tribunal the contributory negligence to the extent of 50% on the Claimant-Driver himself. If the Driver has been held responsible for the accident, the Driver therefore would be entitled only 50% of the compensation that has been awarded against the Owner and Driver of the opposite vehicle involved in the accident.
8. The present appellant-the Owner of the Jeep which met with an accident on the fault of the Claimant himself would not be saddled with the liability of payment of compensation. The impugned award thus deserves to be and is accordingly modified to the extent that the Claimant shall be entitled for only 50% of the total compensation awarded i.e. 50% of Rs.1,72,427/-, which comes to Rs.86,213/- with interest and which has already been deposited by the Insurance Company.
9. The appeal of the Owner thus stands allowed and the award stands modified as stated in the preceding paragraphs.

Sd/-
(P. Sam Koshy)
Judge