

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Order Reserved on 21/06/2018****Order Delivered on 06/08/2018****MAC No. 1135 of 2012**

- Ramchandra Mishra S/o Seeta Ram Mishra, Aged About 54 Years, R/o. G.E. Road, Near Baudh Mandir, Charoda, P.S. Bhilai-3, Tah. Patan, Distt. Durg C.G.

---- Appellant**Versus**

1. I. Ramesh S/o I. Deveiya Aged About 24 Years, R/o. 8-71/A, Sivnaguda, Distt. Nalgunda. (Driver).
2. Ramanna Reddy S/o D.D. Narsimha Reddy, R/o. 16-11-741/5 Dilsuk Nagar, Hyderabad, Tah. & Distt. Hyderabad. (Owner).
3. United India Insurance Company, Ltd. Through : Branch Manager, United India Insurance Company, Ltd, Tara Complex, Powerhouse, Bhilai, Distt. Durg C.G. (Insurer).

---- Respondents

For the Appellant : Shri Tarun Dansena, Advocate.

For Respondent No.3. : Shri Dashrath Gupta, Advocate.

Hon'ble Shri Justice Parth Prateem Sahu**CAV Order**

1. By the instant appeal, the appellant/claimant is challenging the legality and validity of the impugned award dated 31.08.2012 passed by the First Additional Motor Accident Claims Tribunal, Durg, C.G (in short 'Claims Tribunal') in Claim Case No.105 of 2009, whereby the learned Claims Tribunal awarded

Rs.1,27,100/- towards compensation against the injury sustained by the appellant and, thereafter, deducted 50 % of the total amount of compensation towards contributory negligence.

2. Brief facts of this case are that on 10.01.2009 at about 10 P.M when the appellant was returning to his house at Charoda, on his Motorcycle bearing registration No. C.G. 07/LG/7783 from Bhilai – 3, and when he turned right and crossed the road at Charoda which comes from Raipur to Durg at that relevant time truck bearing No. A.P.11/X/2049. coming from Raipur towards Durg, dashed his motorcycle on left side of the road as per spot map.
3. On account of aforementioned accident, the appellant sustained grievous injuries over his head, fractured injury on his left leg and injury also on clavicle bone. His left leg was operated, but injuries of leg could not be cured completely.
4. For the reasons, stated above, the appellant filed claim application claiming Rs. 8,47,086 /- on all heads. Respondent Nos.1 & 2 after service of notice did not appeared and thus they were proceeded ex-parte. Respondent No.3- Insurance Company submitted its reply to the claim application and have denied all the allegations with regard to accident and further pleaded that the accident took place on account of contributory negligence on part of the appellant himself and on the date of accident respondent No.1- driver of the truck was not having valid and effective driving license and, therefore, there was violation of conditions of insurance policy, hence, insurance company is not liable for payment of any compensation.
5. Learned Claims Tribunal after considering the pleadings and evidence of respective parties have awarded Rs. 1,27,100/- by assessing monthly income of Rs.3000/- and also assessed permanent disability to the extent of 10 %.

6. Learned Claims Tribunal have further deducted 50 % of the total amount of compensation towards contributory negligence.
7. This award passed by Learned Claims Tribunal was challenged by the appellant/claimant.
8. Learned counsel for the appellant submits that the learned Claims Tribunal have not assessed the income of the appellant properly and committed error in holding the appellant contributory negligent to the extent of 50 % without any evidence and further that the amount awarded on other heads are towards lower side.
9. Per contra, learned counsel appearing for Respondent No.3/Insurance Company supports the award and have argued that the learned Claims Tribunal after considering the material and evidence have awarded sufficient amount of compensation to the appellant.
10. I have heard learned respective counsels appearing for the parties and perused the records.
11. The learned Claims Tribunal while holding the appellant to be contributory negligent have only considered spot map (Ex.P5) which was prepared by the Police Official, which also shows that the accident took place on left corner of the road on which, the truck was moving.
12. The Spot map itself clearly mentions that the accident did not take place on the right corner or centre of the road, therefore, the appellant cannot be held contributory negligent in accident.
13. Even otherwise, only on the basis of the spot map contributory negligence can not be assessed or proved particularly when the material available on record shows that the accident took place on left side of the road. Even the driver of

offending truck did not entered into witness box, who could be one of the important witness to prove the fact of contributory negligence.

14. 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.”

15. Hon'ble Supreme Court in another judgment between **Jiju Kuruvila Versus Kunjujamma 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”

16. In case in hand there is no eye-witness. Respondent Nos. 1 & 2 driver and owner of the vehicle have not led any evidence with regard to the contributory negligence and, therefore, merely on the basis of the spot map placed on record in claim case the 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, but unfortunately that is not available on record.

17. Learned Claims Tribunal have committed illegality in assessing and holding the appellant to be contributory negligent to the extent of 50 %, which is liable to be set aside.

18. Learned Claims Tribunal in absence of any specific material and documents with regard to the business as pleaded and stated by the appellant rightly held that the income as claimed by the appellant could not be proved by him but at the same time have committed error in ignoring the place of residence i.e., Charoda which is near Bhilai city and also not taking proper notice of wage in

urban areas in assessing the monthly income of deceased. Under these facts and circumstances of this case Tribunal erred in assessing the income of the appellant only to Rs.3000/- per month, which is towards the lower side.

19. The learned Claims Tribunal also committed illegality in awarding meager amount towards other heads.

20. In view of the aforementioned discussion the impugned award passed by the Tribunal is hereby set aside and it is recalculated as under :-

21. The accident took place on 10.01.2009 and, therefore, looking to the price index prevailing on the date of accident as well as also considering wage structure at Bhilai, which is a industrial area, the income of the appellant is assessed at Rs. 4000/- per month and 48,000 /- per annum.

22. Learned Claims Tribunal held that the appellant sustained permanent disablement to the extent of 10 % and, therefore, the loss of earning capacity of appellant would be Rs. 48,00/- per year. On the date of accident injured appellant is of the age of 54 years and, therefore, multiplier of 11 would be applicable.

23. The appellant is entitled to Rs. $4800 \times 11 = 52,800/-$ towards loss of income further he is entitled to Rs. 76,500 /- towards medical expenses.

24. Looking to the nature of injury sustained by appellant on his left leg which definitely caused pains and suffering in each and every moment of his life and, therefore, in view of the evidence of (AW-2) Doctor on the basis of the examination made by him the appellant is also entitled to Rs.20,000/- towards mental agony, pains and suffering and Rs. 10,000/- towards loss of amenities in life and Rs. 2,000/- towards special diet.

25. In view of the above, now the appellant is entitled for total sum of Rs.1,61,300/-.

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

27. No order as to costs.

Sd /-
(Parth Prateem Sahu)
Judge