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HIGH COURT OF CHHATTISGARH, BILASPUR

M. A. (C) No. 919 OF 2012

Indrajeet Singh Bedi son of Late Jyoti Singh Bedi, aged about 55 years, occupation Agriculturist & Businessman, Resident of Sitapur, Police Station and Tahsil Siptapur, District Surguja (Chhattisgarh).

---- Appellant

Versus

1. Ashok Kumar Agrawal, son of Radheshyam Agrawal, aged about 37 years, Bus Operator, Basant Roadways, Basant Marg Bramhapara Nagar Ambikapur, District Surguja (Chhattisgarh).

2. Shyam Bihari Patel, son of Narmada Prasad Patel, aged about 26 years, resident of village Govardhanpur, Police Station Ramkola now District Balrampur Ramanujganj, present resident at village Savitripur, Police Station Chalgali now District Balrampur Ramanujganj (Chhattisgarh).

3. The New India Insurance Company Limited, through the Branch Manager, Patna Branch, District Patna (Bihar).

---- Respondents

For Appellant	:	Ms. Neha Verma, Advocate.
For Respondents No. 1 & 2	:	None
For Respondent No. 3	:	Mr. Anand Kumar Gupta, Advocate.

Hon'ble Shri Justice Parth Prateem Sahu

Judgment On Board

05/07/2018

1. By this appeal, the appellant challenged the legality and validity of the impugned award dated 28/06/2012 passed by the Second Additional Motor Accident Claims Tribunal, Surguja (Ambikapur) (in short 'Claims Tribunal') in Motor Accident Claim Case No. 178/2011, wherein the learned Claims Tribunal has awarded the total compensation of Rs.29,940/- to the claimant, but deducted 50% of the calculated compensation and awarded only Rs.14,970/- to the claimant on the ground that the accident occurred due to collusion of two

vehicles, but the claimant had made party respondents to the owner, driver and insurer of only one vehicle.

2. Brief facts of the case are that on the date of accident, i.e. 21/05/2005, the appellant/claimant was traveling on a bus bearing registration No.CG15/A/2125 (offending vehicle), owned by respondent No. 1, driven by respondent No. 2 and insured with respondent No.3. The aforementioned offending vehicle met with an accident near village Tejpur, Police Station Dharamjaigarh by collusion with another bus bearing registration No.CG15/ZA/0229. In the said accident, appellant/claimant suffered grievous injuries over his head, right leg, left leg, right hand and other parts of the body. It was further stated that his right leg was fractured and little finger of right hand got ruptured. Initially, he was taken to Primary Health Center, Patthalgaon and thereafter, he was taken to Shree Ram Hospital, Ambikapur, where Dr. Sanjay Tripathi treated him. On account of his critical condition, he was referred to Bilaspur where he took treatment as indoor patient in the Hospital of Dr. R. S. Dheer for 10 days. The appellant/claimant submitted that his right leg was operated and looking to the head injury, he was also referred for City-Scan of his head. For the injuries sustained in the accident which took place on 21/05/2005, the appellant/claimant filed a claim application claiming total compensation of Rs.22,00,000/-.

3. The respondent No. 1/owner of the offending vehicle had submitted his reply, in which, it was pleaded that he is owner of the vehicle bearing registration No.CG15/A/2125 but the insurer and owner of other vehicle had not been arrayed as party respondent as it was also involved in accident. It was further pleaded that if it is found that the accident occurred due to his vehicle and there is any liability for payment of compensation, it would be on the Insurance Company to pay the compensation as on the date of accident, the offending vehicle was insured with the Insurance Company for a period of one year from 17/09/2004 to 16/09/2005 vide Policy No.540901/31/04/02363.

4. The respondent No. 2/driver of the offending vehicle had denied the pleadings made in the claim application and pleaded that he has having a valid and effective driving licence to drive the vehicle and the vehicle was insured with the Insurance Company, therefore, the liability for payment of compensation, if any, would be on the Insurance Company.

5. The respondent No. 3/Insurance Company submitted its reply, in which, it was pleaded that there was violation of conditions of the insurance policy as on the date of accident, the driver of the offending vehicle was not having a valid and effective driving licence to drive the offending vehicle. It was further pleaded that the owner, driver and insurer of bus bearing registration No.CG15/ZA/0229 had not been arrayed as party respondents, who was also responsible for the accident. In its pleading, the Insurance Company had specifically denied the fact that the appellant/claimant sustained any severe injury and permanent disability in the accident.

6. The learned Claims Tribunal after considering the pleadings, materials and evidence placed by the respective parties on record, had assessed total compensation of Rs.29,940/- by disbelieving the bills submitted by the appellant/claimant and awarded only Rs.14,970/- by concluding that the appellant/claimant had not arrayed the owner, driver and insurer of other bus bearing registration No.CG15/ZA/0229 as party respondents, which is one of the vehicle responsible for the accident and liable for payment of equal compensation.

7. The learned counsel appearing for the appellant submits that the learned Claims Tribunal committed an illegality in not considering the documents issued by Tejkaur Nursing Home, Dayalband, Bilaspur, where from the appellant/claimant took his treatment being indoor patient for about 10 days while the prescription for purchasing the medicine prescribed by the same doctor

has been allowed by the learned Claims Tribunal. She further argued that the learned Claims Tribunal have not granted the compensation towards further treatment, which is evident from the medical prescription and bills submitted by the appellant/claimant before the learned Claims Tribunal. She lastly argued that the learned Claims Tribunal committed gross illegality in deducting 50% of the amount towards contributory negligence of other bus.

8. Per contra, learned counsel appearing for the Insurance Company/respondent No. 3 supported the impugned award and has argued that the learned Claims Tribunal after minutely examining the materials available on record, have rightly awarded the amount of compensation. He further argued that as driver, owner and insurer of one of the vehicle has not been arrayed as party respondents before the Claims Tribunal, therefore, the learned Claims Tribunal was justified in holding the liability of the vehicle insured by him to the extent of 50% and awarded 50% amount, out of total compensation calculated.

9. I have heard learned counsel appearing for the appellants and learned counsel appearing for the respondent No. 3/Insurance Company and perused the entire record carefully.

10. It is not in dispute that the accident took place between two buses on 21/05/2005 and the appellant/claimant was traveling in one of bus i.e. bus bearing registration No.CG15/A/2125. It is also apparent that the appellant/claimant sustained grievous injuries over his head, right leg, left leg, right hand and other parts of the body as well as his right leg was fractured and little finger of right hand got ruptured. The injuries sustained by the appellant/claimant are evident from the medical prescriptions and documents placed on record and marked exhibited during the course of his evidence. The learned Claims Tribunal in Paragraph-11 have discussed about the injuries sustained by the appellant/claimant and further discussed in Paragraph-13 with

regard to the veracity of the medical documents and medicine bills submitted by the appellant/claimant. The document (Exhibit A-3), which is a bill issued by Tejkaur Nursing Home, Dayalband, Bilaspur on 31/05/2005 wherein the total amount with regard to the expenditure occurred during the course of treatment from 22/05/2005 to 31/05/2005 has been mentioned as about Rs.20,600/-, but the learned Claims Tribunal have disbelieved the said document (Exhibit A-3) on the ground that though the bill was issued on 31/05/2005, but the date was mentioned from 22/05/2005 to 01/06/2005. The learned Claims Tribunal ignored the other document issued by the Tejkaur Nursing Home, Dayalband, Bilaspur, which is of the same doctor i.e. Dr. R.S. Deer (Ms. Artho.) (Exhibit A-16), in which, it has been specifically mentioned the date of admission as on 22/05/2005 and to be discharged on 01/06/2005, but the said OPD/Discharge Certificate was issued on 31/05/2005.

11. From joint perusal of both the documents (Exhibit A-3 and Exhibit A-16), it reveals that the appellant/claimant was admitted in the hospital from 22/05/2005 and to be discharged on 01/06/2005, but the letter has been prepared only on 31/05/2005 and further looking to the continuous follow checkup mentioned in the document as well as looking to the injuries sustained by the appellant/claimant, which is uncontroverted, there is no occasion for disbelieving the bills submitted by the appellant/claimant towards medical expenditure. The learned Claims Tribunal ought to have considered the medical expenditure bill and OPD/Discharge Certificate (Exhibit A-3 and Exhibit A-16) minutely correlating with other document, which was accepted by the learned Claims Tribunal i.e. bills of medicine.

12. The learned Claims Tribunal awarded the bills of medicines which were purchased on the prescription of Dr. R. S. Dheer, which is sufficient to show that the appellant/claimant took treatment from Dr. R. S. Dheer. The document annexed with the records, it is sufficient to assess the nature and grievousness

of the injury and the treatment required for its cure. From consideration of the documents also, it cannot be said that the document (Exhibit A-3) to be fabricated document and not believable as evidence of treatment bill. When *prima facie* looking to the material available on record, it appears that the claims with regard to medical bill, medicine bills are not to be termed as fabricated one then, only on account of technicalities those claims should not be denied, especially looking to the object of the Motor Vehicles Act, 1988, which is a beneficial piece of legislation.

13. For the aforesaid reasons, I allow the medical bill submitted by the appellant/claimant as (Exhibit A-3) towards medical expenditure during the course of his treatment from 22/05/2005 to 01/06/2005 at Tejkaur Nursing Home, Dayalband, Bilaspur, where his right leg was operated and the rod was inserted. The appellant is entitled for the amount mentioned in (Exhibit A-3), i.e. Rs.20,600/- along with other amount awarded by the learned Claims Tribunal.

14. So far as the finding with regard to deduction of 50% amount out of the total compensation, I found that the learned Claims Tribunal committed gross illegality in deducting 50% of the amount of compensation on the ground that the owner, driver and insurer of other bus bearing registration No.CG15/ZA/0229, which was also involved in the accident, had not been arrayed as party respondents in the claim application before the learned Claims Tribunal. In my considered opinion, the said finding arrived at by the learned Claims Tribunal is perverse and contrary to the law in view of the judgment passed by the Hon'ble Supreme Court in ***T. O. Anthony v. Karvarnan and others*** reported in ***(2008) 3 SCC 748***, in which, the Hon'ble Supreme Court has held as under :-

> "6. "Composite negligence" refers to the negligence on the part of two or more persons. Where a person is injured as a result of negligence on the part of two or more wrongdoers, it is said that the person was injured on

account of the composite negligence of those wrongdoers. In such a case, each wrongdoer is jointly and severally liable to the injured for payment of the entire damages and the injured person has the choice of proceeding against all or any of them. In such a case, the injured need not establish the extent of responsibility of each wrongdoer separately, nor is it necessary for the court to determine the extent of liability of each wrongdoer separately. On the other hand where a person suffers injury, partly due to the negligence on the part of another person or persons, and partly as a result of his own negligence, then the negligence on the part of the injured which contributed to the accident is referred to as his contributory negligence. Where the injured is guilty of some negligence, his claim for damages is not defeated merely by reason of the negligence on his part but the damages recoverable by him in respect of the injuries stand reduced in proportion to his contributory negligence.

7. Therefore, when two vehicles are involved in an accident, and one of the drivers claims compensation from the other driver alleging negligence, and the other driver denies negligence or claims that the injured claimant himself was negligent, then it becomes necessary to consider whether the injured claimant was negligent and if so, whether he was solely or partly responsible for the accident and the extent of his responsibility, that is, his contributory negligence. Therefore where the injured is himself partly liable, the principle of “composite negligence” will not apply nor can there be an automatic inference that the negligence was 50:50 as has been assumed in this case. The Tribunal ought to have examined the extent of contributory negligence of the appellant and thereby avoided confusion between composite negligence and contributory negligence. The High Court has failed to correct the said error.”

15. Considering the law laid down by the Hon'ble Supreme Court in ***T.O. Anthony*** *(*supra*)* and looking to the facts and circumstances of the case where the claimant was traveling in one of the two vehicles met with accident and there is no negligence on the part of the appellant. Therefore, present is a case of composite negligence of both the drivers of two vehicles and claimant can file claim application against any of them for entire compensation. The appellant has not committed any error in filing claim application against owner, driver and insurer of only one vehicle. The appellant/claimant is entitled for total compensation as calculated and no amount can be deducted considering contributory negligence of other bus. The finding of the learned Claims Tribunal with regard to deduction of 50% amount of compensation towards contributory negligence of other bus deserves to be and is hereby set aside.

16. In view of above, the appellant/claimant is now entitled for total compensation of Rs.50,540/- (20,600 + 29,940) from the respondents No. 3/Insurance Company. This amount of compensation shall carry interest @ 6% per annum as awarded by the Claims Tribunal from the date of filing of the claim application till its realization. The other conditions imposed by the learned Claims Tribunal shall remain intact.

17. Accordingly, the award impugned passed by the learned Claims Tribunal is modified to the extent indicated above.

18. In the result, the appeal is allowed in part.

19. No order as to costs.

Sd/-
(Parth Prateem Sahu))
Judge

Yogesh