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HIGH COURT OF CHHATTISGARH AT BILASPUR

MISC. APPEAL (C) NO. 693 OF 2011

Kumari Parvati Sahu, D/o Bisaoharam Sahu, aged about 19 years, R/o Village Bhardakala, Police Station Arjunda, Tahsil- Gunderdehi, District Durg (C.G.)

… Appellant

versus

1. Rishiraj, S/o Chovaram Sahu, aged about 35 years, R/o Parri Basantpur, Police Station City Kotwali, Rajnandgaon, Tahsil and District Rajnandgaon (C.G.) Occupation- Driver of Vehicle Metador No. CG04-ZA-0932.
2. Virumal, S/o Holamal @ Holaram Shindhi, aged about 42 years, R/o Basantpur, District Rajnandgaon (C.G.) (Registered owner of Vehicle Metador No. CG04-ZA/0932)
3. Board Manager, Bajaj Alliance General Insurance Company Limited, office at Shivmohan Bhavan, Vidhansabha Road, Pandari, Raipur, District Raipur (C.G.) (Insurance Companu)

… Respondents

For Appellant	:	Mr. Praveen Dhurandhar, Advocate.
For Respondents No. 1 and 2	:	Mr. P.K.C. Tiwari, Senior Advocate, assisted by Mr. Ashutosh Trivedi, Advocate.
For Respondent No.3	:	Mr. Sachin Singh Rajput, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

24/01/2018

1. The present is a claimant's appeal under Section 173 of the Motor Vehicles Act, 1988, seeking for enhancement of the compensation.

2. Challenge in the present appeal is to the award dated 16.12.2010 passed by the Eight Additional Motor Accident Claims Tribunal (F.T.C), Durg, in Claim Case No. 221/2008.

3. Vide the impugned award, the learned Tribunal, in an injury case, under Section 166/140 of the Motor Vehicles Act, has awarded a compensation of Rs.50,000/- to the appellant-claimant with interest thereon at the rate of 6% per annum from the date of presentation of the claim application. While passing the award, the learned Tribunal had assessed the total compensation payable to the claimant at Rs.1,00,000/-, however, assessing the contributory negligence on the part of the injuredclaimant her liability has been fixed at the rate of 50% of the compensation assessed, i.e., Rs.50,000/-, fastening the liability for payment of the same jointly and severally upon the owner and driver of the offending vehicle, after exonerating the insurance company of its liability.

4. Claimant is assailing the award on three grounds. Firstly, that the exoneration of the insurance company is bad in law; secondly, that the finding of contributory negligence also is without any sufficient and cogent evidence which have come on record and, thirdly, that the percentage of disability assessed by the Tribunal is extremely on the lower side without appreciating the nature of injuries suffered by the claimant.

5. So far as the ground of exoneration of the insurance company is concerned, learned counsel for the claimant submits that the said issue is no longer *res integra*, for the reason that the Hon'ble Supreme Court has already laid to rest the said issue by two recent judgments, i.e., a Larger Bench decision rendered in the case of **Mukund Dewangan v. Oriental Insurance Company Limited, AIR 2017 SC 3668,** which has been reiterated in **Santlal** v. **Rajesh & Others**, **AIR 2017 SC 4054**, where the vehicle involved was a tractor itself.

6. So far as the ground of contributory negligence is concerned, the contention of the learned counsel for the claimant is that the finding of the contributory negligence also is erroneous, for the reason that the claimant in the instant case was a travelling in a tractor-trolley and therefore there could not have been a contributory negligence assigned on her as she could not have been held responsible for the accident to have occurred. It was further contended that the finding of the Tribunal is also erroneous for the reason that the finding is simply based on some statement collected from the records of criminal case. Further, the claimant has specifically denied before the Tribunal of having made such statement. Moreover, no evidence whatsoever has been led by any of the respondents to establish contributory negligence on the part of the claimant.

7. So far as the disability part is concerned, it was the contention that AW-3 Dr. Prakash Bhalerao who has been examined before the Tribunal has deposed that he had examined the claimant and had also issued a certificate that the claimant had suffered 50% disability by virtue of the injuries sustained from the accident as there is a fracture on her right hand. However, the Tribunal has assessed the disability at 20% which is not reasonable and justified and the same deserves to be enhanced. So also, the finding of the Tribunal in awarding a lump sum compensation is without any justification and the same also needs a reconsideration.

8. Learned counsels appearing for the respondents, particularly the insurance company, opposing the appeal, submits that the award does not warrant interference as it seems to have been based on the evidence which have come on record. According to the learned counsel for the insurance company, the award in the instant case was of the year 2010 and that at the relevant point of time the finding of the Tribunal was in accordance with the judgments which were in force then and therefore it cannot be found fault with.

9. So far as the contributory negligence is concerned, learned counsel for the insurance company submits that the finding of the Tribunal was on the basis of the statements made by the claimant and her relatives during the course of investigation in the criminal case and thus it is a finding of fact which may not call for any interference.

10. Heard the contentions put forth on either side and perused the records.

11. So far as the liability part is concerned, the admitted factual position shows that the driver of the offending vehicle at the relevant point of time had a valid licence to drive a Light Motor Vehicle effective from 22.11.2006 to 24.8.2020. The accident in the instant case is dated 19.4.2008 which would show that at the relevant point of time the driver had an effective licence to drive a Light Motor Vehicle. Thus, the insurance company in the light of a recent decision of the Hon'ble Supreme Court in the case of **Mukund Dewangan** (supra) which has been followed by the Hon'ble Supreme Court in the case of **Santlal** (supra) where the vehicle involved was a tractor itself, this Court is of the opinion that the finding of exoneration of the insurance company on this ground is no longer justifiable and the same deserves to be and is accordingly set aside.

12. So far as the finding of contributory negligence is concerned, what is paramount to be seen is that the insurance company has not led any evidence so also the owner and the driver have not led any evidence, on the contrary, they have been proceeded ex parte after filing of their written statement.

13. The claimant's side in the instant case have led their evidence and in their evidence specific questions were put to them in the cross-examination referring to the statements which were made in the criminal case where there is a specific denial by the claimant. There is no further evidence or question put forth by the insurance company to the claimant to disbelieve or to disprove the statement that they had made before the Tribunal.

14. Given the facts and circumstances, the finding of the contributory negligence only on relying on the statement that the claimant or her relatives had made in the criminal case, was not justifiable. Moreover, what also cannot be lost sight of is the fact that the claimant was travelling in a tractor-trolley where there is no question of putting her hand or a part of her body outside of the trolley because the trolley of the tractor itself was an open carriage and therefore the finding of contributory negligence on the part of a person travelling in trolley cannot be justifiable. The said finding also therefore deserves to be set aside and the same is set aside/quashed. It is held that the accident arose because of the negligence on the part of the driver of the offending vehicle and thus the claimant shall be entitled for receiving the entire compensation.

15. So far as the disability part is concerned, this Court would not like to interfere with the finding of the Tribunal in assessing the disability at 20% though the doctor had opined it 50% and the same seems to be in accordance with the view of the Hon'ble Supreme Court in the case of **Raj Kumar** v. **Ajay Kumar & Anr.**, **2011 (1) SCC 343**. However, this Court is of the opinion that once when there is a finding of disability of 20%, awarding of a lump sum compensation would not be justified as there does not appear to be any good ground for denying more compensation for which the claimant otherwise is entitled.

16. The accident in the instant case is dated 19.4.2008. Even if the notional income for the relevant period is taken, it would be Rs.36,000/- annually which would be at the rate of Rs.3000/- a month. 20% of the said amount comes to Rs.7200/- which if multiplied applying the multiplier of 18, the same would come to Rs. 1,29,600/-. It is thus held that the claimant shall be entitled for a disability compensation of Rs.1,29,600/-. In addition, the claimant would also be entitled for an amount of Rs.20,400/- towards miscellaneous expenses incurred for the treatment as also for engagement of attendant etc. Thus, making the total compensation payable to the claimant at Rs.1,50,000/- instead of Rs.1,00,000/- which the Tribunal has awarded.

17. As a consequence, the appeal is allowed and the impugned award stands accordingly modified and enhanced to the extent that the claimant shall be entitled to get a total compensation of Rs.1,50,000/- which shall be paid by the insurance company. The enhanced amount of compensation shall also carry interest at the same rate as has been fixed by the Tribunal.

Sd/-
(P. Sam Koshy)
Judge

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