

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 783 of 2012**

Rajesh Kumar Yadav, S/o Shri Punwasi Yadav, aged about 33 years,
R/o Meena Complex, Padum Nagar, Bhilai-3, Tahsil Patan, District
Durg (CG).

---- Appellant**Versus**

1. Khumesh Dewangan, S/o Shri Ramesh Dewangan, aged about 30 yearsk, R/o Kasaridih, Durg, District Durg (CG).
2. Smt. Prabhjeet Kaur W/o Satpal Singh Bhatiya, R/o Ganjpara, Durg, Tahsil and Distt. Durt (CG).
3. National Insurance Co. Ltd. Station Road, Durg, Tehsil and District Durg (CG).

---- Respondents

For Appellant	:	Shri P.R. Patankar, Advocate.
For respondent No.3	:	Shri R.N. Pusty, Advocate.

Hon'ble Shri Justice P. Sam Koshy**Judgment On Board****09.03.2018.**

1. The present appeal under Section 173 of the Motor Vehicles Act has been filed by the claimant seeking enhancement of compensation against the award dated 10.05.2012 passed by the 6th Additional Motor Accident Claims Tribunal, Durg (in short, the Tribunal) in Claim Case No.57/2011. Vide the said impugned award, the Tribunal in an injury case after assessing 50 percent contributory negligence on the part of claimant has awarded a compensation of Rs. 3,64,462/- with interest @ 6 percent per annum from the date of application after quantifying the compensation at Rs.7,23,924/-.
2. The contention of the appellant is that firstly the amount of compensation towards medical expenses has not been completely

awarded inasmuch as the claimant had taken treatment at Pune for shrinking of his Trachea at Deenanath Mangeshkar Hospital, Pune. The claimant was referred to the Hospital at Pune by the Doctors of Apollo BSR Hospital, Bhilai, where he had undertaken initial treatment. Total expenses incurred at Pune was Rs.60,968/-.

3. Secondly, the finding of contributory negligence is erroneous for the reason that there is no evidence brought on record by any of the respondents showing negligence on the part of the present appellant in the accident to occur. He further submits that the only ground for assessing contributory negligence is that the claimant had hit the offending vehicle Truck from the rear side which shows that he was not cautious or careful while driving the vehicle which resulted in the accident.
4. The contention of the appellant is that the time of accident was 1 AM at night and the place of accident was pitch dark. The driver of Truck had suddenly applied brake on the road which resulted in the accident. Thus, the finding of contributory negligence ought not to have been assessed by the Tribunal.
5. The counsel for the insurance company opposing the appeal submits that the finding of contributory negligence does not warrant any interference and the claimant has also been awarded sufficient compensation. That, the fact he dashed the rear side of the Truck itself shows that he was carelessly driving the vehicle and therefore applying the principle of *res ipsa loquitur* the contributory negligence assessed by the Tribunal cannot be found fault with. The Tribunal

has rightly taken into consideration the principle laid down by the Supreme Court in case of Oriental Insurance Co. Ltd. Vs. Premlata Shukla & Ors., 2007 (13)SCC 476. He further submits that the claimant himself has disclosed the fact that he hit the rear side of Truck which proves that there was an element of contributory negligence on his part.

6. However, perusal of record would show that none of the respondents had entered before the Tribunal to lead evidence including the insurance company to prove the negligence, if any, on the part of the claimant. Moreover, the time of accident was 1 AM in the night when it was pitch dark. Further, the place of accident was also not a place where there was sufficient light with which the claimant could have easily seen the vehicle getting suddenly stopped after applying the brake. There does not appear to be any contravention or any evidence to disbelieve the averment of the claimant that the Truck was not moving at the time of accident particularly when, as per the claimant the Driver of Truck had suddenly applied the brake and stopped the vehicle on road.
7. Given the aforesaid factual matrix of the case, it is difficult to hold that there was sufficient material on record to assess the finding of contributory negligence. Things would had been different if the accident would had been occurred in bright day light. Thus, this court holds that the finding of contributory negligence does not seem to be properly assessed or proved by the Tribunal. The same deserves to be and is hereby set aside.

8. So far as the treatment of claimant at Pune is concerned, the same also stands established from the document Ex. P/101 to Ex. P/120. The amount of expenditure incurred at Pune was Rs.60,968/- which also stands established from the fact that the doctor from Apollo Hospital at Bhilai i.e. Rajesh Sinha, Surgeon, had deposed before the Tribunal in respect of treatment which has been brought by the claimant post accident and subsequently he was referred to Deenanath Mangeshkar Hospital, Pune, for treatment of his throat which got shrunk on account of providing ventilator through his throat. Thus, it is ordered that the claimant shall also be entitled for an amount of Rs.60,698/- incurred for his treatment at Pune, making total compensation payable to the claimant at Rs.7,89,892/-.
9. As the findings of contributory negligence has already been quashed by this court, the claimant is entitled for the entire amount of compensation i.e. Rs.7,89,892/-. The above enhanced amount shall also carry interest at the rate as awarded by the Tribunal.
10. The appeal thus stands allowed and disposed of.

Sd/-
(P.Sam Koshy)
Judge

inder