

NAFR

**HIGH COURT OF CHHATTISGARH AT BILASPUR****MAC No. 763 of 2012**

Arun Vishwakarma S/o Babu Rao Vishwakarma Aged About 50 Years, R/o. Gudhiyari, Sheetlapara, P.S. Gudhiyari, Raipur, Tahsil and District Raipur, Chhattisgarh

**---- Appellant****Versus**

1. Nirmal Das Manikpuri S/o Doman Das Manikpuri Aged About 31 Years R/o. Behind Chandi Mandir, Saraswati Nagar, Durg, District Durg, Chhattisgarh (Driver)
2. M/s Raipur Bus Service Through- Mahesh Coloney, Near Pulgaon, G.E. Road, Durg, District Durg, Chhattisgarh (Owner)
3. The I.C.I.C.I.-Lombard General Insurance Company Limited, Through- Divisional Manager, Divisional Office, Lalganga Shopping Mall, Raipur, Tahsil and District Raipur, Chhattisgarh

**---- Respondents**

|                          |   |                                    |
|--------------------------|---|------------------------------------|
| For Appellant            | : | Mr. Shivendu Pandya, Advocate      |
| For Respondents No.1 & 2 | : | Mr. Rudra Nath Mukharjee, Advocate |
| For Insurance Company    | : | Mr. Tarkeshwar Nande, Advocate     |

**Hon'ble Shri Justice P. Sam Koshy****Order on Board****06/02/2018**

1. Present is an appeal by the Claimant under Section 173 of the Motor Vehicles Act assailing the award dated 12.01.2010, passed by the 4<sup>th</sup> Additional Motor Accident Claims Tribunal (FTC), Raipur, Chhattisgarh, in Claim Case No. 99/2009.
2. Vide the impugned award, the Tribunal, after assessing the contributory negligence of 25% against the appellant, has awarded a compensation of Rs.28,823/- with interest @ 9% per annum.
3. The counsel for the appellant submits that the Tribunal while passing the impugned award has wrongly assessed contributory negligence and has assessed the negligence against the present appellant to the extent of 25% and has fastened the liability of payment of compensation upon the respondents of 75%. He submits that there

is no substantial cogent evidence brought before the Tribunal by the respondents to establish the contributory negligence. He further submits that the impugned award is otherwise also on lower side and the compensation amount awarded by the Tribunal deserves for a suitable enhancement.

4. Counsels appearing for the respondents however opposing the appeal submits that the finding of contributory negligence seems to be proper, legal and justified and does not warrant interference. He submits that there is sufficient evidence to draw an inference that there was a negligence on the part of the appellant while boarding the bus for the accident to occur and therefore the finding of contributory negligence may not be disturbed.
5. So far as the quantum of compensation is concerned, the contention of the counsel for the Insurance Company is that the Tribunal has assessed the compensation taking into consideration the evidence which have come on record and as such the said quantum also does not deserve any interference.
6. Having heard the contentions put forth on either side and on perusal of record, what clearly reflects is that the finding of contributory negligence assessed by the Tribunal is only on the ground that the appellant was not careful when he was boarding the bus and since he was careless while boarding the bus, the accident occurred. However, on the contrary, there is evidence to show that when the appellant tried to board the bus, the Driver of the bus suddenly moved the bus forward, which resulted in the accident and the resultant injury.

7. Given the factual matrix of the case and the evidence which have come on record, this Court is of the opinion that the finding of contributory negligence assessed by the Tribunal does not seem to be justified and the same deserves to be and is accordingly set-aside. The Claimant shall be entitled for the entire amount of compensation.
8. So far as the quantum of compensation is concerned, though the Tribunal has assessed the total compensation at Rs.38,430/- considering the nature of injury, which the Claimant has suffered i.e. only a fracture on the right leg, which subsequently has been healed, but the appellant was subjected to operation and steel rod had to be inserted.
9. Given the aforesaid facts and circumstances of the case, this Court is of the opinion that ends of justice would meet if the Claimant is awarded a total compensation of Rs.60,000/- instead of 38,430/- as awarded by the Tribunal. Thus there shall be an enhancement of Rs.21,570/-.
10. The said enhanced amount shall also carry interest at the same rate as has been awarded by the Tribunal.
11. The appeal stands allowed and the Claimant shall be entitled for the entire amount of compensation assessed i.e. of Rs.60,000/- as awarded.

Sd/-  
**(P. Sam Koshy)**  
**Judge**