NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

M. A. (C) No. 162 OF 2014

Manharan Prasad Vaisnav S/o Shyam Sunder Vaisnav aged about 18 years, R/o Village Bhankimogra, at present Mundapar, P.S. Korba Civil & Revenue District Korba (C.G.).

---- Appellant

Versus

1. Pratap Das Joshi S/o Bhagatram Joshi R/o Shankerpara Supela, Bhilai, P.S. Supela, Civil & Revenue District Durg (C.G.).
2. Branch Manager, The New India Insurance Company Ltd. Korba, The New India Insurance Company Ltd. Bhilai, Civil & Revenue District Durg (C.G.).

---- Respondents

For Appellant : Mr. Punit Ruparel and Mr. Kalpesh Ruparel, Advocates
For Respondent No. 1 : None
For Respondent No. 2 : Mr. K. N. Nande, Advocate

Hon'ble Shri Justice Parth Prateem Sahu
Judgment on Board

02/11/2018

1. By this instant appeal, appellant has challenged the legality, validity and propriety of the impugned award dated 20/12/2013 passed by the Additional Motor Accident Claims Tribunal (F.T.C.), Korba, Chhattisgarh (hereinafter refereed to as 'Claims Tribunal') in Claim Case No. 97/2013, whereby the learned Claims Tribunal has partly allowed the claim application filed by the appellant and awarded an amount of Rs.1,34,500/- as compensation in an injury case.

2. Brief facts of the case relevant for disposal of this appeal are that on 21/05/2010 when the appellant was traveling on a Bolero Jeep (four wheeler vehicle) bearing registration No. C.G-12-D-0899 and going from Gajra Bhankimogra village to village Chhota Nagpur along with his friends and relatives to attend the marriage ceremony, on the way, at about 2.15 P.M., Bolero Jeep vehicle on which the appellant was travelling, met with an accident with a Truck bearing registration No. C.G.-07-C-1861 ('offending vehicle') driven by respondent No. 1 (ownercum-driver). In the said accident, appellant sustained grievous injuries on his right shoulder, right elbow and other parts of the body. The appellant was immediately taken to the nearest hospital i.e. South Eastern Coalfields Limited, Regional Hospital Kurasia, Chirimiri Area, P.O. Kurasia, District Korea, Chhattisgarh where it has been found that the appellant sustained head injury, dislocation of his right shoulder and right elbow. Thereafter, the appellant was admitted in Indira Gandhi District Hospital, Korba, Chhattisgarh as indoor patient from 21/05/2010 to 24/05/2010 vide Discharge Ticket Exhibit P-39.

3. The appellant sustained permanent disability, therefore, he filed an application before the learned Claims Tribunal mentioning therein that he was working as a Painter and earning Rs.8,000/- per month, but due to permanent disability of 40% sustained by him, he is unable to do the work, which he was doing prior to the date of accident and claimed Rs. 12,00,000/- in total as compensation on all heads.

4. Respondent No. 1 submitted reply to the claim application and denied the claim of the appellant. He pleaded that accident took place due to negligence of driver of the Bolero vehicle and further pleaded that his vehicle i.e. offending vehicle was insured with respondent No. 2-Insurance Company on the date of accident, therefore, liability, if any, will be on the Insurance Company to pay the compensation.

5. Respondent No.2/Insurance Company also submitted reply to the claim application while denying the claim of the appellant, pleaded that there was violation of conditions of insurance policy and the accident took place on account of the negligence on the part of drivers of both vehicles i.e. Bolero and Truck, therefore, the liability to pay compensation will be equal.

6. Learned Claims Tribunal considered the pleadings and evidence produced by respective parties, partly allowed the claim application filed by the appellant and awarded compensation to the tune of Rs.1,34,500/- after deducting 50% towards contributory negligence.

7. Learned counsel appearing for the appellant argued that learned Claims Tribunal has assessed income of the appellant as Rs.3,000/- per month which is on the lower side. He further argued that the learned Claims Tribunal committed an error in not awarding the amount towards future prospects, pain and suffering. He lastly argued that the learned Claims Tribunal committed illegality in deducting 50% of the amount of compensation towards contributory negligence as the appellant was a passenger on the vehicle.

8. Per contra, learned counsel appearing for Respondent No.2/Insurance Company vehemently opposed the submissions made by learned counsel for the appellant and argued that learned Claims Tribunal has correctly assessed the income of the appellant as Rs.3,000/- per month and also awarded an amount towards permanent disability. He further argued that the award passed by learned Claims Tribunal is just and proper.

9. I have heard learned counsel appearing for the parties and perused the record carefully.

10. Undisputedly, the appellant was travelling as a passenger in Bolero vehicle, which was met with an accident with the offending vehicle I.e. Truck, therefore, the occupant of the vehicle can claim against both the vehicles or against any one of the vehicles out of the two, which are involved in the accident.

11. The Hon'ble Supreme Court in the matter of **T. O. Anthony v. Karvarnan and others[1],** has decided the issue of contributory negligence in case of occupant of the vehicle where the accident was between two motor vehicles and held as under :-

> "6. "Composite negligence" refers to the negligence on the part of two or more persons. Where a person is

1 **(2008) 3 SCC 748**

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.”

12. From the law laid down by the Hon'ble Supreme Court in ***T. O. Anthony*** (supra), where the accident is between two motor vehicles then it is for the claimant to file claim application either against both the vehicles or can also choose to file his claim application against any one of the vehicles.

13. The principle of contributory negligence is not applicable in the instant case as the appellant is a passenger and not a driver of the vehicle, therefore, learned Claims Tribunal has committed an error in deducting 50% of the awarded amount towards contributory negligence. In view of the above the finding of contributory negligence recorded by learned Claims Tribunal is set aside.

14. The learned Claims Tribunal ignoring that the accident took place in the year, 2010 i.e. on 21/05/2010 and on the said date, even if we treat the appellant to be a Labour, then also looking to the price index and the wages prevailing at that relevant time, the monthly income of the appellant as assessed by the learned Claims Tribunal is on lower side.

15. Further, to prove the disability sustained by the appellant in the aforementioned accident, he had submitted himself before the Medical Board, Korba and the Medical Board had issued a permanent disability certificate, which shows the disability to the extent of 40% on all limbs vide Exhibit P-1. The disability certificate was proved by Dr. Rudrapal Singh (PW-1). There is no material on record placed by the learned counsel appearing for the Insurance Company showing that the award passed in the claim application or the disability certificate issued in favour of the appellant has been challenged.

16. In view of the above, the impugned award passed by learned Claims Tribunal requires reconsideration and the amount of award is recalculated as below:-

The appellant has pleaded in his application that on the date of accident, he was working as a Painter and earning Rs. 8,000/- per month, but he has not placed any relevant material on record to prove the nature of employment and his monthly income. Considering the date of accident and the rate of wages prevailing in the State of Chhattisgarh in the year, 2010 and also looking to the fact that appellant is residing near industrial area and city, the income of the appellant is taken as Rs.4,000/- per month and in view of the law laid down by Hon'ble Supreme Court in the matter of **National Insurance Company Limited v. Pranay Sethi and others**[2], 40% towards future prospects is to be added in the monthly income i.e. Rs.1,600/- (40% of Rs. 4,000/-) and thus the monthly income of appellant is assessed at Rs.5,600/-. The appellant sustained 40% permanent disability, which was accepted by the learned Claims Tribunal and not challenged by the respondents herein and therefore, this Court is also accepting the disability of the appellant to the extent of 40% as pleaded and proved vide Exhibit P-1 issued by the Medical Board, loss of income of the appellant comes to Rs.5,600/- x 40% = i.e. Rs. 2,240/- per month. The yearly loss of income of the appellant would be assessed as Rs.26,880/- (2,240 x 12) and looking to the age of the appellant on the date of accident as pleaded and stated in the claim application was 18 years, the multiplier of 18 is applicable to the present case. By applying th multiplier of 18 with Rs.26,880/-, the loss of annual income of the appellant comes to Rs.4,83,840/- (26,880 x 18). In addition to the above, the appellant is also entitled for additional amount of Rs.3,000/- towards pain and suffering, Rs. 3,000/- towards loss of income for lay off period, Rs. 3,000/- towards attendant and Rs. 3,000/- towards special diet as awarded by learned Claims Tribunal.

17. As per aforementioned recalculation, the appellant is now entitled for total compensation of Rs.4,95,840/- (4,83,840 + 3000 + 3000 + 3000 + 3000) on all heads. This amount of compensation shall carry interest @ 7% per annum as

2 **AIR 2017 SC 5157**

awarded by the learned 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.

18. For the reasons stated above, the impugned award passed by the learned Claims Tribunal is modified to the extent indicated above. The amount of compensation is enhanced to Rs.4,95,840/- instead of Rs. 1,34,500/- as awarded by learned Claims Tribunal.

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

20. No order as to costs.

Sd/-

(Parth Prateem Sahu)
Judge

Yogesh