

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Order Reserved on 01.08.2018****Order Delivered on 17.08.2018****MAC No. 7 of 2014**

1. Yashwant S/o Preetram, Aged About 33 Years, R/o. Village- Potiyadih, Dhamtari, Tahsil Revenue and Civil District Dhamtari, C.G.
2. Smt. Nandani W/o Yashwant, Sinha Aged About 28 Years, R/o. Village- Potiyadih, Dhamtari, Tahsil Revenue and Civil District Dhamtari, C.G.

---- Appellants**Versus**

1. Roshanlal Dhruv S/o Bajjulal Dhruv, Aged About 39 Years, R/o Jail Road, Bathena, Post- Bathena Ward, Tahsil, Revenue and Civil Distt. Dhamtari C.G. (Driver)
2. Krishna Kumar S/o Mansingh, Caste – Sahu, R/o Polsay Para, Durg, Tahsil, Revenue and Civil Distt. Durg, C.G. (Owner)
3. Divisional Manager, Oriental Insurance Company Limited, M.B. Trade Near Balak Chowk, Dhamtari, Tahsil, Revenue and Civil Distt. Dhamtari C.G. (Insurar).

---- Respondents

For Appellants	:	Shri Kunal Das, Advocate.
For Respondent No.3	:	Shri Raj Awasthi, Advocate.

Hon'ble Shri Justice Parth Prateem Sahu

CAV Order

1. By the instant appeal, the appellants/claimants are challenging the legality and validity of the impugned award dated 30.09.2013 passed by the Additional Motor Accidents Claims Tribunal, Dhamtari (in short 'Claims Tribunal') in Claim Case No. 139 of 2013, whereby the learned Claims Tribunal awarded total compensation of Rs. 84,000/- against the claim of Rs. 9,25,000/- on ground of fatal accident by deducting 50 % of the amount of compensation towards contributory negligence.
2. Brief facts of this case are that on 09.06.2011 Dev Das aged about 4 years was traveling alongwith his father on bullock cart with paddy loaded on it, and going to rice mill. At that relevant time one Truck bearing No. C.G. 04- ZC – 0829 driven by Respondent No.1 tried to over take the bullock cart and in that process due to negligence of respondent No.1 back side of the truck hit the horns of the Buffalo pulling bullock cart due to which, Buffalo tried to get aside suddenly. Due to sudden act of Buffalo and jerk on bullock cart Dev Das fell down from the cart and came under wheel of the cart and sustained head injuries. Subsequently, during the course of treatment deceased Dev Das succumbed to injuries sustained by him.
3. For the reason, stated above, appellants/claimants filed a claim application before the competent Claims Tribunal claiming Rs. 9,25,000/- as compensation on account of death of their only son.
4. Respondents No. 1 and 2 driver and owner of the truck submitted their reply to the claim application and denied all the adverse pleadings

made in the claim application and, fact of accident was also denied by them. They further pleaded that on the date of accident Respondent No.1 driver of the truck was holding valid and effective driving license and the offending vehicle was also insured with respondent No.3. Hence, they prayed for dismissal of the claim application.

5. Respondent No.3 Insurance Company submitted its reply to the claim application and have stated that on the date of accident respondent No.1 driver of the truck was not having valid and effective driving license, therefore, there is violation of conditions of insurance policy. Further, it has been pleaded that as the minor child Dev Das was sitting on bullock cart without any security and, therefore, there is contributory negligence on the part of the deceased also.

6. Learned Claims Tribunal on the basis of the pleadings, evidence and other material available on record have arrived at conclusion that death of deceased Dev Das took place on account of accident caused due to the involvement of the motor vehicle i.e., offending vehicle bearing registration No. C.G. 04- ZC – 0829.

7. Learned Claims Tribunal calculated the amount of Rs. 1, 68,000/- as compensation including the amount awarded towards other conventional heads but have deducted 50 % of the amount calculated towards contributory negligent on part of the deceased minor child.

8. Learned counsel for the appellants/ claimants submits that learned Claims Tribunal have committed illegality in holding the deceased to be contributory negligent to the extent of 50 % without their being any material and evidence led by respondent No.1 and at the same time ignored the documentary evidence wherein, it finds place that the horns

of the Buffalo pulling the cart was having the colour of the body of the truck. He further submits that Learned Claims Tribunal have also committed illegality in not awarding proper amount towards the other conventional heads.

9. Respondent No.1 though served but have not made any representation.
10. Per contra, the learned counsel appearing for Respondent No.3/Insurance Company supports the award and argued that the learned Claims Tribunal had passed the impugned award in accordance with law and have already given reasonable compensation to the appellants/claimants in the facts and circumstances of the case.
11. I have heard learned respective counsel appearing for the parties and perused the records.
12. The death of minor Dev Das aged about 4 years in an accident between truck and bullock cart is undisputed and the findings recorded by the learned Claims Tribunal to this effect was also not challenged by respondent No.3 (Insurance Company).
13. The only grounds raised by learned counsel for the appellants is that learned Claims Tribunal have illegally held the deceased to be contributory negligent to the extent of 50 % and have not awarded proper compensation on conventional heads.
14. So far as, the grounds raised with regard to the contributory negligence on the part of the deceased Dev Das is concerned, from perusal of the records, the case of the appellants/claimants from the initial stage is that while over taking cart back side of the truck dashed horns of

Buffalo pulling cart due to which, bullock cart suddenly shifted towards left side and in a Jerk sustained by the bullock cart, deceased fell down and came under the wheel of the bullock cart.

15. From the aforementioned facts, it is evident that the offending vehicle driven by respondent No.1 was instrumental to the accident and accident took place when the truck was over taking the bullock cart which itself shows that there is no evidence to this effect that there was any fault on the part of the driver of the bullock cart.
16. Even the driver of offending truck did not enter into witness box, who could be one of the important witness to prove the fact of contributory negligence.
17. Even otherwise, it is not a case that deceased himself was driving the bullock cart or by his any act accident took place.
18. In view of the aforementioned facts, emerging on records deceased cannot be said to have been contributed in any manner in accident.
19. In the matter of **Minu Rout and Anr. Versus Satya Pradyumna Mahapatra & Ors** (supra) passed by the Hon'ble Supreme Court, wherein one of the issue is with regard to the contributory negligence held as under -:

“17. The Tribunal, on appreciation of the oral and documentary evidence, has recorded the erroneous finding by placing strong reliance upon the charge- sheet, Ext.1 without considering the fact that the criminal case was abated against the deceased and further has made observation in the judgment that the appellants had not produced the FIR. Therefore, it has held that

there was 50% contributory negligence on the part of the deceased driver in causing accident. The Tribunal ought to have seen that non production of FIR has no consequence for the reason that charge sheet was filed against the truck driver for the offences punishable under Sections 279 read with Section 302 IPC read with the provisions of the M. V. Act. The Insurance Company, though claimed permission under Section 170 (b) of the Motor Vehicles Act, 1988 from the Tribunal to contest the proceedings by availing the defence of the owner of the offending vehicle, it did not choose to examine either the driver of the truck or any other independent eye witness to prove the allegation of contributory negligence on the part of the deceased Susil Rout on account of which the accident took place as he was driving the car in a rash and negligent manner. In the absence of rebuttal evidence adduced on record by the Tribunal, the Tribunal should not have placed reliance on the charge-sheet, Ext.1 in which the deceased driver was mentioned as an accused and on his death his name was deleted from the charge sheet. The Tribunal has referred to certain stray answers elicited from the evidence of P.W.2 and P.W.3 in their cross-examination and placed reliance on them to record the finding on issue 1.”

20. Hon'ble Supreme Court in another judgment between **Jiju Kuruvila Versus Kunjujamma Mohan** reported in **(2013) 9 SCC 166** held as under :-

“ 20.05. The mere position of the vehicles after accident, as shown in a scene mahazar, cannot give a substantial proof as to the rash and negligent driving on the part of one or the other. When two vehicles coming from opposite directions collide, the position of the vehicles and its direction, etc. depends on a number of factors like the speed of vehicles, intensity of

collision, reason for collision, place at which one vehicle hit the other, etc. From the scene of the accident, one may suggest or presume the manner in which the accident was caused, but in the absence of any direct or corroborative evidence, no conclusion can be drawn as to whether there was negligence on part of the driver. In absence of such direct or corroborative evidence, the Court cannot give any specific finding about negligence on the part of any individual”

21. In view of the above, discussions and the law laid down by the Hon'ble Supreme Court the learned Claims Tribunal committed illegality in assessing and holding the deceased to be contributory negligent in an accident to the extent of 50 %.
22. Learned Claims Tribunal have committed error in awarding very meager amount towards the other conventional heads i.e. funeral expenses, loss of estate & love and affection. The amount on compensation on other conventional heads have been quantified by the Hon'ble Supreme Court in the matter of **National Insurance Company Ltd. Versus Pranay Sethi & Others** reported in **AIR 2017 SC 5157** in fatal accident cases.
23. For the reasons stated above, the impugned award is set aside. The amount of compensation is recalculated as under :-
24. The appellants are entitled for compensation of Rs. 1,50,000 /- towards death of their son. They are further entitled for total sum of Rs.30,000/- on other conventional heads (Rs. 15,000/- towards funeral expenses and Rs. 15,000/- towards loss of estate).

25. On the basis of the above calculation, award passed by the learned Claims Tribunal is modified accordingly and now the appellants/claimants will be entitled for total compensation of Rs. 1,80,000/-(One Lakh Eighty Thousand). This amount of compensation shall carry interest @ 6% per annum from the date of filing of the claim petition till its realization.

26. In the result, the appeal is allowed in part and the impugned award stands modified to the extent indicated hereinabove.

27. No order as to costs.

Sd /-

(Parth Prateem Sahu)

Judge