

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 563 of 2013

- The National Insurance Co.Ltd. Thru- Sr. Divisional Manager, D.O. B-1, Taha Complex, Ring Road-1, Priyadarshini Nagar, Bilaspur, Chhattisgarh (non-applicant 5)

---- Appellant

Versus

1. Smt.Purnima Bai Yadav, W/o Late Dinesh Yadav Aged About 23 Years
2. Babulal Yadav S/o Vishram Yadav Aged About 57 Years
3. Smt. Kunti Bai Yadav W/o Babulal Yadav Aged About 52 Years
4. Chandrashekhar Yadav S/o Babulal Yadav Aged About 7 Years Minor, represented through father and natural guardian
5. Smt. Bediya Bai Yadav W/o Late Vishram Yadav Aged About 72 Years

All are R/o village Sahaspur, P.S. Dhamdha, Tah. Saja, Distt. Durg Chhattisgarh

Claimants

6. Dulesh Kumar Sahu S/o Paharuram Sahu Aged About 31 Years R/o Mokhla, P.S. Lalbagh, Tah. And District : Rajnandgaon, Chhattisgarh (Driver)
7. Darshan Singh S/o Hajara Singh R/o Hig- 2360, M.P. Housing Board, Bhilai, P.S. Jamul, Tah. And Distt. District : Durg, Chhattisgarh (Owner)
8. The New India Insu.Co.Ltd. S/o Thru- The Divisional Manager, Infront Of Project Auto Mobile, G.E. Road, Power House, Bhilai, Tah. And Distt. Durg C.G., District : Durg, Chhattisgarh
9. Amarjit Singh Suri S/o Trilochan Singh Suri R/o House No. B-425, Gali No. 25, Smriti Nagar, Bhilai, P.S. Supela, Tah. And District : Durg, Chhattisgarh

---- Respondents

For Appellant	: Shri RN Pusty, Advocate
For Respondents- 1 to 5	: Shri Praveen Durandhar, Advocate
For Respondent- 8 / Insurance Company	: Shri Pankaj Agrawal, Advocate
For Respondent- 9	: Shri Shikhar Sharma, Advocate
For Respondents- 6 & 7	: None appears

Hon'ble Shri Justice Parth Prateem Sahu**Order on Board****19.06.2019**

1. Appellant/Insurance company of truck bearing No.CG04-E-2127 filed this appeal under section 173 of motor vehicle act, 1988 challenging the impugned award dated 25.02.2013 passed by 6th Additional Motor Accidents Claims Tribunal, Durg in motor accident claim case No.12/2011 whereby learned Claims Tribunal while allowing claim application in part, awarded a total sum of Rs.8,34,000/- as compensation and also recorded a finding that there was contributory negligence on the part of deceased, driver of another offending truck.

2. Brief facts relevant for disposal of this appeal are that on 17.04.2011 at about 11.30 pm Dinesh Yadav was driving truck No.CG04 E 2127 (for short, 'truck of deceased') and coming from Hirapur Bhanpuri towards Tatibandh. When he reached near Vir Savarkar Nagar Square, at that relevant time one other truck bearing no. CG07 LE 5305 (for short, 'offending truck') driven by respondent No.6 rashly and negligently dashed truck of deceased. In the aforementioned accident Dinesh Yadav stuck in the truck, sustained grievous injuries and subsequently succumbed to the injuries. The matter was reported to concerned Police Station based on which Crime No.456 of 2009 was registered against respondent- 6/non-applicant- 1 for commission of offence punishable under Section 304A IPC. On account of death of Dinesh Yadav, claimants who are legal representatives including widow have filed claim application claiming compensation of Rs.41,24,000 against death of Dinesh Yadav in the Motor accident.

3. Non-Applicants 1 & 2 who are driver and owner of offending truck even after service of notice did not appear and were proceeded *ex-parte*.
4. Non-applicant-3/ Insurance Company of offending truck submitted its reply to claim application and denied adverse pleadings made in the claim application. Apart from other defences available, it also took defense that there was contributory negligence on the part of deceased also and further that there was violation of conditions of Insurance Policy as deceased was not possessing valid and effective driving license to drive the truck on the date of accident.
5. Non-applicant 4/ owner of truck of deceased submitted reply to claim application and admitted employment of Dinesh Yadav with him as driver of truck. The said non-applicant though admitted employment of deceased under him, but denied the fact of his income and salary as pleaded by claimants in claim application.
6. Non-applicant 5/ appellant herein and Insurance Company of truck of deceased also submitted reply to claim application and admitted the fact that truck was insured with it and the policy issued was effective on the date of accident. Insurance Company also took a plea with respect to contributory negligence of drivers of both the vehicles involved in the accident.
7. Learned Claims Tribunal on appreciation of pleadings, documentary and oral evidence placed on record by respective parties held that there was accident due to head on collusion between two vehicles, therefore there was contributory negligence on the part of deceased himself also.

Drivers of both trucks were held responsible for the accident. Learned Claims Tribunal after recording contributory negligence to the extent of 50% each by both the drivers involved in the accident, held Insurance Company of both trucks involved in the accident to pay compensation to the extent of 50% each and awarded Rs.8,34,000/- as compensation.

8. Learned Counsel for the appellant-Insurance Company of truck of deceased submits that finding of contributory negligence recorded by learned Claims Tribunal is contrary to oral evidence of eyewitness available on record. He further argues that Learned Claims Tribunal not considered material i.e. documentary evidence and oral evidence available on record in its entirety and recorded a finding that there was contributory negligence of both the drivers of vehicles involved in the accident. It was further argued that learned Claims Tribunal committed error in awarding total amount of compensation to the claimants even after recording contributory negligence on the part of deceased driver, which is not sustainable.

9. Learned Counsel appearing on behalf of respondents- 1 to 5 / Claimants submits that he has also filed cross-objection challenging impugned award passed by learned Claims Tribunal on the ground that learned Claims Tribunal wrongly arrived at a finding that deceased Dinesh Yadav, who was driving one of the trucks involved in the accident was also contributory negligent as the finding recorded by learned Claims Tribunal is without any evidence and it is only on presumption and surmises. He also argued that learned Claims Tribunal committed error in awarding less amount of compensation as claims tribunal not awarded any amount

towards future prospectus and meagre amount was awarded on other conventional heads.

10. Learned Counsel appearing for respondent- 8/ Insurance Company of offending truck supports the impugned award passed by Learned Claims Tribunal and submits that as there is head on collusion between two vehicles and Learned Claims Tribunal while considering the spot map i.e. Ex.P/5 rightly held both the drivers of vehicles involved in accident were contributory negligent to the extent of 50% each. He further submits that Learned Claims Tribunal rightly assessed compensation which needs no interference.

11. Learned counsel for respondent-9/ owner of truck of deceased supports the contention raised by claimants and argues that there was no specific evidence brought on records by the parties to prove the fact of contributory negligence.

12. I have heard learned Counsel for the parties and perused records. Claimants in support of their claim application filed Ex.P/1 final report, P2 copy of FIR, P3 Dehatinalishi, P4 Morgue Intimation, Ex.P/5 Crime details form in which spot map is also prepared by Police Officer and Ex.P/6 postmortem report of deceased along with other documents of criminal case. On perusal of Dehatinalishi based on which FIR was registered it is mentioned that truck of deceased was coming slowly from Hirapur Bhanpuri towards Tatibandh on 17.04.2011 at about 11.30 pm and at that time driver of offending truck driving his truck rashly and negligently, dashed truck of deceased. On the basis of FIR and Dehatinalishi, Ex.P/1

final report / Charge sheet which was submitted before concerned judicial Magistrate against respondent-6/non-applicant 1 who is driver of offending truck.

13. The claimants examined Babulal Yadav as AW1 and Kanhaiya Lal as AW2 in support of claim application. Perusal of evidence of AW2 shows that he is one of the eyewitnesses to the accident who was coming from back side of truck which deceased was driving and reached on the spot immediately after the accident. He in his evidence specifically stated that it is the driver of offending truck, respondent-6 who drove his truck rashly and negligently and came on wrong side smashing truck of deceased DineshYadav. He also stated in his cross examination that there was no fault of deceased Dinesh Yadav in the accident.

14. Other witness Babulal Yadav AW1 is a hearsay witness who got the knowledge of accident through Kanhaiya Lal AW2.

15. Learned Claims Tribunal while recording finding with respect to contributory negligence though considered documents Ex.P1 to P3 but arrived at a decision and held contributory negligence of deceased Dinesh Yadav only on the basis of Ex.P/5 i.e. spot map. While recording contributory negligence of deceased, learned Claims Tribunal not considered the fact that apart from spot map, parties who have asserted and taken defense of contributory negligence have not led any evidence to prove their pleadings.

16. Contributory negligence is a fact which is required to be proved by the parties asserting and taking the defence of same by producing legal and reliable piece of evidence before Claims Tribunal.

17. In the instant case none of the parties have produced any evidence before learned Claims Tribunal to prove the fact of contributory negligence, in fact, they have not examined any witness.

18. Hon'ble Supreme Court while considering the issue of contributory negligence in the matter of **Jiju Kuruvila and others Vs Kunjujamma Mohan and others** reported in **(2013) 9 SCC 166**, held as under:

“20.5 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 the 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.”

19. Recently Hon'ble Supreme Court in yet another matter **Kumari Kiran through her father Vs Sajjan Singh and others** reported in 2015 (1) SCC 539 decided the issue of contributory negligence and held as under :

“17. The observations made by this Court in the case of **Jiju Kuruvila** (*supra*) surely apply to the fact situation on hand. Upon thorough examination of the facts and legal evidence on record in the present case, it cannot be said that the appellant-father was

rash and negligent just on the assumption made by the Tribunal that the collision occurred in the middle of the road since the two vehicles were approaching from opposite directions of the road. However, the only aspect of the case on hand that we can reasonably assume is that the appellant-father would have taken sufficient caution while riding the motorcycle since he was travelling with his two minor children (appellant-minors). Further, upon examining the evidence produced on record, there is no proof showing negligence on the part of the appellant-father. Thus in our view, the contributory negligence apportioned by the High Court at 25% on the appellant-father and 75% on the driver of the offending tractor is erroneous keeping in view the legal principles laid down by this Court on this aspect in the above referred case. Thus, we are of the firm conclusion that the negligence is wholly on the part of the driver of the offending tractor since he was driving the heavier vehicle. Therefore, we set aside the 25% contributory negligence on the part of the appellant-father as apportioned by the High Court.”

20. In the aforementioned judgments, Hon’ble Supreme Court has held that mere position of the vehicles mentioned in spot map would not automatically lead to the fact of contributory negligence on the part of drivers of vehicles involved in the accident but it has to be proved by producing direct or corroborative evidence. Hon’ble Supreme Court has also held that to prove contributory negligence of driver and owner of other truck, they are also required to be examined as witnesses in evidence before learned Claims Tribunal, if such plea has been taken by the Insurance Company.

21. In view of aforementioned discussions and the law laid down by Hon’ble Supreme Court, if we consider fact of the case in hand, Insurance Company has not led any evidence in support of its plea or defence of

contributory negligence. Neither driver nor owner of offending truck has been examined as witness before learned Claims Tribunal and learned Claims Tribunal recorded a finding of contributory negligence only on the basis of spot map appears to be on conjunctures and surmises which is not sustainable and is hereby set aside. In view of above, finding recorded by learned Claims Tribunal with regard to contributory negligence is not sustainable and it is hereby set aside. Learned Claims Tribunal committed error in awarding total amount of compensation calculated by it even after recording a finding of contributory negligence which is also erroneous in the eyes of law. Appellant herein is Insurance Company of the Truck driven by deceased.

22. Now coming to the cross objection filed by respondents- 1 to 5 /claimants on the ground that learned Claims Tribunal awarded compensation on lower side and in not granting any amount towards future prospects.

23. Hon'ble Supreme Court in the matter of **National Insurance Company Vs Pranay Sethi** reported in 2 AIR 2017 SC 5157 has dealt with the issue of future prospects to be awarded to the government servants, self-employed and the persons working on fixed salary.

24. In the instant case on the date of accident the age of deceased was 27 years as mentioned in Ex.P/6 i.e. post-mortem report and therefore, 40% of his established income to be added to annual income towards future prospects for the purpose of calculating amount of compensation.

Learned Claims Tribunal has awarded an amount of Rs.18,000/- only on other conventional heads.

25. In view of above discussion, this court proposes for re-calculation of amount of compensation. Income of deceased was assessed by learned Claims Tribunal as Rs.6,000/- per month and Rs.72,000/- (6000 x 12) per annum. By adding 40% of established income towards future prospects, total income of the deceased per year comes to Rs.1,00,800/- (72000 + 72000 x 40/100). After deducting $\frac{1}{3}^{\text{rd}}$ of yearly income of deceased towards his personal and living expenses, yearly dependency of claimants would come to Rs.67,200/- (1,00,800 – 100800 x $\frac{1}{3}$). As on the date of accident age of deceased was 27 years, appropriate multiplier to be applied would be 17. By multiplying loss of yearly dependency with multiplier of 17, total loss of dependency would come to Rs.11,42,400/- (67200 x 17). Apart from this amount of loss dependency, claimants are entitled for an amount of 70,000/- towards other conventional heads and thereby total amount of compensation would come to Rs.12,12,400/- (Ruprees twelve lakhs twelve thousand four hundred) instead of Rs.8,34,000/-.

26. As finding of contributory negligence recorded by learned Claims Tribunal is set aside in preceding paragraph, consequently, now, above amount of compensation will be paid by respondent-8/Insurance Company of offending truck (CG07-LE 5305) to satisfy the amount of compensation.

27. Aforementioned total amount of compensation will carry 6% interest per annum from the date of filing of application till its realization. Other conditions imposed by learned Claims Tribunal shall remain intact.

28. Appellant/Insurance Company of truck of deceased (CG04-E2127) will be entitled to recover amount so deposited by it from the amount of compensation deposited by respondent-8 before learned Claims Tribunal.

29. The appeal and the cross-appeal are allowed in part and the impugned award is modified to the extent as indicated above.

30. No order as to costs.

Sd/-
(Parth Prateem Sahu)
JUDGE