

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 1175 of 2013**

- Narendra Kumar Patle S/o Rajendra Kumar Patle Aged About 19 Years
R/o Kareli, P.S. And Tah. Berla, Distt. Durg C.G., Chhattisgarh (Claimant)

---- Appellant**Versus**

1. Jagdish Ram Vishwakarma, S/o Babulal Vishwakarma Aged About 42 Years R/o Banjari Tola Near School, Malajkhanda, P.S. Malajkhanda, Tah. Baihar, Distt. Balaghat M.P., Madhya Pradesh (Driver of the vehicle)
2. Smt. Nisha Rani Koli W/o Ranjeet Singh Koli M/s Malajkhanda Truck Operator Union Pauni, R/o Malajkhanda Pauni, P.S. Malajkhanda, Tah. Baihar, Distt. Balaghat M.P., District : Balaghat, Madhya Pradesh (Owner of the vehicle)
3. The Divisional Manager, Reliance General Insu.Co.Ltd., Thru- Shop No. 412, 413, 4th Floor, Ravi Bhawan, Jai Stambh Chowk, Raipur, Tah. And Distt. Raipur C.G., District : Raipur, Chhattisgarh (Insurer of the vehicle)

---- Respondents

For Appellant	: Shri Vedant Bhelonde, Advocate on behalf of Shri PR Patankar, Advocate
For Respondents- 1 and 2	: Shri Ashish Surana, Advocate
For Respondent- 3	: Shri SS Rajput Advocate

Hon'ble Shri Justice Parth Prateem Sahu**Order on Board****27.06.2019**

1. Appellant/claimant has challenged the impugned award dated 30.07.2013 passed by 3rd Additional Motor Accident Claims Tribunal, Durg (for short, 'Claims Tribunal') in Claim Case No.277 of 2011 whereby learned Claims Tribunal allowed the application in part and awarded a total sum of Rs.1,75,650/- after deducting 25% towards contributory negligence on the part of appellant.
2. Brief facts relevant for disposal of this appeal are that on 11.07.2010 at about 2.30 pm appellant was travelling on motorcycle (Bajaj Platena) bearing No. CG07-LD-7729. When he reached near Ahiwara Power

house Main Road, one truck bearing No.CG 04 JA-1237 (hereafter referred to as 'offending truck') driven by non-applicant 1 rashly and negligently dashed the motorcycle of appellant. In the aforementioned accident, appellant suffered severe injuries over his left shoulder, palm of right hand and left side of his face. After accident, appellant was taken to District Hospital, Durg where he took treatment as inpatient from 11.07.2010 to 16.08.2010. During the course of his treatment, grafting of his face and hand was done and 15% permanent disability was assessed by doctor of District Hospital, Durg.

3. After recovery of injuries, he filed claim application under Section 166 of Motor Vehicle Act before competent Claims Tribunal claiming Rs.17,05,000/- as compensation on the grounds mentioned therein.

4. Non-applicants 1 and 2, driver and owner of offending truck submitted reply to claim application and pleaded that no accident took place from offending tractor, driven by non-applicant-1. It was pleaded that it is the appellant, who was driving his motorcycle rashly and negligently and met with an accident. It was further pleaded that offending truck was owned by non-applicant-2, and insured with non-applicant-3, Insurance Company and therefore, liability if any, for payment of compensation would be on the Insurance Company.

5. Non-applicant-3/ Insurance Company submitted reply to claim application and pleaded that amount of compensation pleaded by claimant is on higher side. It is further pleaded that there is no permanent disability suffered by appellant /claimant, there was contributory negligence on the

part of appellant also, who was driving motorcycle. On the date of accident, driver of offending truck was not possessing valid and effective driving license and there was no valid fitness certificate and permit with offending truck, therefore, there is violation of conditions of Insurance Policy and Insurance Company is not liable to pay any amount of compensation.

6. On appreciation of pleadings and evidence placed on record by respective parties, learned Claims Tribunal held that accident took place due to rash and negligent driving of both vehicles involved in the accident, therefore, there is contributory negligence on the part of appellant to the extent of 25% and 75% on the part of offending truck. Learned Claims Tribunal after assessing income of deceased as Rs.3,000/- per month, awarded compensation to the tune of Rs.1,75,650/- along with interest @ 7.5% per annum from the date of filing of claim application till its realisation.

7. Learned counsel for the appellant submits that learned Claims Tribunal committed error in holding 25% contributory negligence on the part of appellant without there being any cogent and admissible piece of evidence placed on record by the parties, merely taking that there was head on collision. It was also argued that learned Claims Tribunal assessed monthly income of deceased as Rs.3,000/- per month which is on lower side as on the date of accident, appellant/claimant was earning more than Rs.6,000/- per month as pleaded in claim application. He further submits that learned Claims Tribunal committed error in awarding meagre amount on other heads including non-pecuniary damages.

8. Per contra, learned counsel appearing on behalf of non-applicants-1 and 2/respondents- 1 and 2 supports the impugned award.

9. Learned counsel for Insurance Company/respondent- 3 submits that learned Claims Tribunal assessed contributory negligence on the part of appellant looking to overall material and evidence available on record. He further submits that learned Claims Tribunal has already awarded reasonable amount of compensation looking to the injuries suffered by appellant and therefore, award needs no interference.

10. I have heard learned counsel for the parties and perused records.

11. So far as first ground raised by learned counsel for the appellant /claimant with respect to contributory negligence is concerned, from perusal of record, it is evident that non-applicants took plea of contributory negligence. Documents Ex.P1- Final report and Ex.P2- FIR say that there is head on collusion by motorcycle and truck. Apart from the fact mentioned in above two documents, there is no other evidence placed on record by non-applicants/respondents. Even non-applicants not recorded evidence of any witnesses in support of their plea of contributory negligence taken in reply to claim application.

12. So far as assessment of contributory negligence is concerned, this issue has been dealt with by Hon'ble Supreme Court in plethora of judgments.

13. 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.”

14. In another judgment rendered by Hon'ble Supreme Court in the matter of **Minu Rout and another Vs Satya Pradyumna Mohapatra and others 2013** reported in AIR SCW 5375, while setting aside the finding of contributory negligence, held as under:

“12. -----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 of 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- Exh. 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 PW.2 and PW3 in their cross-examination and placed reliance on them to record the finding on issue No. 1. For the aforesaid reasons, the findings and reasons recorded by the Tribunal on the contentious issue No. 1 holding that there is contributory negligence on the part of the deceased driver in the absence of legal evidence adduced by the Insurance Company to prove the plea taken by it that accident did not take place on account of rash and negligent driving of the truck driver is erroneous in law.”

15. In light of law laid down by Hon'ble Supreme Court in aforementioned judgments for considering contributory negligence on the part of driver of one of the vehicles involved in the accident in the facts and circumstances of case at hand, it is evident that except the plea taken in reply to claim application, non-applicants have not placed any material or specific evidence to prove the fact of contributory negligence.

16. Contributory negligence is a fact required to be proved by the party asserting it by placing legal and admissible piece of evidence on record, which has not been done by non-applicants in the instant case. As held by Hon'ble Supreme Court, mere head on collision of two vehicles may not automatically lead to contributory negligence of drivers of both vehicles.

17. In view of above discussion and law laid down by Hon'ble Supreme Court, the finding recorded by learned Claims Tribunal that appellant/claimant was also contributory negligent to the accident to the extent of 25% is erroneous in law and the finding arrived at by learned Claims Tribunal is hereby set aside.

18. So far as other ground raised by learned counsel for appellant that learned Claims Tribunal committed error in assessing monthly income of

appellant on lower side is concerned, though appellant/claimant pleaded that income of appellant was Rs.6,263/- on the date of accident, but he has not placed any material or documentary evidence to prove the fact of income. When income could not be proved by claimant by placing documentary or reliable piece of evidence before Claims Tribunal, learned Tribunals or Courts are required to take notional income of claimant or deceased as the case may be, for the purpose of assessment of compensation.

19. In case at hand, date of accident is 11.07.2010 and appellant/claimant is resident of district Durg. Looking to the date of accident as also considering the price index prevailing at the place where the claimant is residing, in the opinion of this Court it will be appropriate to assess income of appellant @ Rs.3,500/- per month and Rs.42,000/- (3500 x 12) per annum. Appellant on the date of accident was 19 years of age and therefore, for calculating his total income, relevant multiplier would be 18. By applying multiplier of 18 to yearly income of appellant, total loss of income would come to Rs.7,56,000/- (42000 x 18).

20. Learned Claims Tribunal assessed appellant's loss of income due to disability suffered by him to the extent of 15%. Therefore, total loss of income due to disability is Rs.1,13,400/- (756000 x 15/100).

21. Appellant was admitted in hospital for more than one month and learned Claims Tribunal committed error in awarding only Rs.10,000/- towards pain and suffering. Looking to injuries suffered by appellant and the treatment he went through by getting plastic surgery of his face and

hand for which he went through operation and was in hospital as inpatient for more than a month, in the opinion of this Court, appellant/claimant will be entitled for Rs.20,000/- instead of Rs.10,000/- for pain and suffering.

22. Appellant will be further entitled for amount already awarded by learned Claims Tribunal on other heads like Rs.77,000/- for medical expenses, Rs.4,000/- towards attendant, Rs.5,000/- towards special diet, Rs.1,000/- for conveyance and Rs.20,000/- towards loss of amenities of life and Rs.20,000/- towards dis-figuration.

23. Now appellant will be entitled for total sum of Rs.2,60,400/- (rupees two lakhs sixty thousand four hundred) instead of Rs.1,75,600/- awarded by learned Claims Tribunal as compensation. This amount will carry interest @ 7.5% per annum from the date of filing of claim application till its realisation.

24. Other conditions imposed by learned Claims Tribunal shall remain intact.

25. In the result, the appeal is allowed in part and impugned award passed by learned Claims Tribunal is modified to the extent as indicated above.

26. No order as to costs.

Sd/-
(Parth Prateem Sahu)
JUDGE