

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 958 of 2013

- Toofan @ Karu Porte S/o Dhekra Porte Aged About 40 Years R/o Chhawani Near Rukhmani Dharamkanta, Adivashi Mohalla, Chhawani, Tah. And Distt. Durg, Chhattisgarh

---- Appellant

Versus

1. Jaswant Singh, S/o Late Chandan Singh Aged About 46 Years R/o Ramchand Hotel, Khurshipar, Bhilai, Tah. And Distt. Durg C.G
2. Jitendra Kumar Choudhary S/o Dhakan Singh Aged About 35 Years R/o Ahiwara, Durg, Nandini Khurdi, Tah. And Distt. Durg C.G
3. Divisional Manager S/o Chola Mandalam General Insu.Co.Ltd., Regd. And Main Office- Dare House, 2nd Floor, N.S.C. Bose Road, Chennai- 600001 India, Regional Office- Raipur C.G

---- Respondents

For Appellant	:	Shri Shikhar Bakhtiyar, Advocate on behalf of Shri BP Singh, Advocate
For Respondents-1 and 2	:	None appears
For Respondent- 3 / Insurance Company	:	Shri Rohitashwa Singh, Advocate on behalf of Shri Bhaskar Payashi, Advocate

Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

08.03.2019

1. By this appeal, the appellant has assailed the impugned award dated 30.04.2013 passed by the learned Motor Accident Claims Tribunal, Durg, district Durg (for short, 'the Tribunal') in Claim Case No.36 of 2012 wherein the Tribunal has partly allowed the claim application filed by the appellant and awarded a total sum of Rs.25,000/- in an injury case.

2. Brief facts for disposal of this appeal are that on 29.11.2010 at 11 am appellant was selling some Ayurvedic medicines in front of his house, near Rukhmini Dharamkanta, Chhawani, district Durg. At that relevant time, Jaswant Singh, respondent- 1, driver of the truck bearing No.CG13-

D-1110 (for short, 'offending vehicle') drove the offending vehicle rashly and negligently and dashed the appellant in which he sustained grievous fracture injuries. He sustained fracture injuries on his left femur bone apart from injuries on other parts of the body. The accident was reported to Police Station Khursipar, district Durg. On account of aforementioned injuries, appellant filed claim application before Claims Tribunal claiming Rs.6,50,000/- as compensation.

3. Respondent- 1 driver and respondent- 2 owner submitted their reply to the claim application and denied the fact of accident by the offending vehicle. It was further pleaded that driver was having a valid and effective driving license to drive the offending vehicle and all relevant certificates and documents for plying the said vehicle on road were available with them. It was also pleaded that on the date of accident the vehicle was insured with respondent- 3, Cholamandalam Insurance Company and therefore, liability if any for payment of compensation would be on the Insurance Company.

4. The Insurance Company filed separate reply and pleaded that said accident was not reported to the Insurance Company and claim value in the claim application was on higher side. Further it was pleaded that on the date of accident offending vehicle was being driven in contravention of the terms and conditions of the Insurance Policy as on the date of accident driver of the offending vehicle was not possessing a valid and effective driving license. It was also specifically pleaded that they have not insured the offending vehicle because the insurance policy was not produced for verification.

5. Learned Claims Tribunal while appreciating the pleadings, evidence and material available on record, assessed total compensation of Rs.33,653/- and also held that appellant himself was contributory negligent to the extent of 50% and assessed the income to be awarded as Rs.16,827/- to be paid by respondents- 1 & 2. Thereafter, learned Claims Tribunal looking to be provisions of Section 140 of the Motor Vehicle Act awarded a total sum of Rs.25,000/- to the claimants.

6. Learned counsel appearing for the appellant raised only one ground that learned Claims Tribunal erred in holding that the appellant was contributory negligent to the extent of 50% without there being any evidence and material available on record. He further argued that learned Claims Tribunal only on the basis of presumption and assumption held that the appellant was also contributory negligent to the extent of 50% in the accident.

7. Learned counsel appearing for the Insurance Company submitted that as on the date of accident offending vehicle was not insured and therefore, Insurance Company has rightly been exonerated from the liability.

8. I have heard learned counsel for the parties and perused the record. On perusal of FIR Ex.P2 in which it has been very categorically mentioned that on the date of accident the offending vehicle being driven rashly and negligently, dashed the appellant. Spot map Ex.P3 shows the place of accident to be by side of road and as per FIR, the said accident took place at 11 am. Learned Claims Tribunal recorded that driver of offending

vehicle did not appear as witness so that the exact position with respect to the accident could be ascertained. Learned Claims Tribunal also recorded that there was contradiction and suspicion in the manner of accident, but as the appellant himself was lying at restricted place without any permission, held him contributory negligent to the extent of 50%. There is no material available on record to arrive at a conclusion that the place where the accident took place was a restricted area where entry of a person requires any permission from any authority. Even if the facts available on record are taken as they are, the appellant was on the side of one corner of the road and also looking to the time and place of the accident, in view of this Court, the appellant cannot be held to be guilty of contributory negligence.

9. The Hon'ble Supreme Court while dealing with the issue of contributory negligence in the decision of ***Minu Rout & Anr. v. Satya Pradyumna Mohapatra & Ors., 2013 AIR SCW 5375***, dealt with the plea of contributory negligence taken by Insurance Company where neither the driver nor any independent witness was examined to prove the allegation of contributory negligence. The Supreme Court, 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.”

10. In case of ***Jiju Kuruvila and others v. Kunjuamma Mohan and others, (2013) 9 SCC 166***, the Hon’ble Supreme Court has 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.”

11. In Case at hand the only material available on record is spot map, Ex.P3 which shows the place of accident, which itself cannot be said to be the proof of contributory negligence of any person, ie the appellant in particular, when the driver of offending vehicle did not enter into the witness box, who could be the best witness as to describe the manner in which the accident took place. The findings of contributory negligence are only based on presumption.

12. In view of above discussion and the law laid down by the Hon'ble Apex Court in the matters of ***Minu Rout (supra) and Jiju Kuruvila (supra)***, this court is finding it very difficult to uphold the order passed by learned Claims Tribunal with respect to contributory negligence of the appellant to the extent of 50% in the accident.

13. In view of above discussion the finding recorded by learned Claims Tribunal that appellant was contributory negligent to the accident is hereby set aside. The appellant will now be entitled to Rs.33,653/- rounded off to Rs.33,650/- as compensation from respondents- 1 and 2 jointly and severally. The amount of compensation will carry interest @ 6% per annum from the date of application till its realization as awarded by learned Claims Tribunal.

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

Sd/-
(Parth Prateem Sahu)
JUDGE