

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 1181 of 2013**

1. Smt. Rajshree Jain (Duggad) W/o Late Jitendra Kumar Jain (Duggad) aged about 45 Years
2. Ku. Bhawna Jain (Duggad) D/o Late Jitendra Kumar Jain (Duggad) aged about 22 Years
3. Ku. Twinkle Jain (Duggad) D/o Late Jitendra Kumar Jain (Duggad) aged about 20 years
4. Kushal Kumar Jain (Duggad) S/o Late Jitendra Kumar Jain (Duggad) aged about 9 Years Minor, through- Mother Smt. Rajshree Jain (Duggad)
5. Smt. Shanti Jain (Duggad) W/o Bhimraj Jain (Duggad) aged about 68 Years
6. Bhimraj Jain (Duggad) S/o Late Kewalchand Jain (Duggad) aged about 71 Years

All R/o Main Road, P.S.- Kotwali, Post- G.P.O. Jagdalpur, Civil & Revenue Distt. Bastar Chhattisgarh.

----Appellants/Claimants**VERSUS**

1. Hemant Sanduja S/o Koushal Sanduja aged about 21 Years R/o Naya Munda, Post- G.P.O., P.S. Bodghat, Jagdalpur, Distt. Bastar C.G.
2. Ramesh Parakh S/o Late Mohanlal Parakh aged about 42 Years R/o Balaji Ward, Post- G.P.O. P.S. Kotwali, Jagdalpur, Distt. Bastar, Chhattisgarh
3. United India Insurance. Co. Ltd. S/o Through- Branch Manager, Main Road, Post- G.P.O., P.S. Kotwali, Jagdalpur, Distt. Bastar Chhattisgarh
4. Lachhim Kashyap S/o Ballu Kashyap aged about 21 Years R/o Baghbahara Para, Bastar, Post, P.S. And Tah. Bastar, Distt. Bastar, Chhattisgarh
5. Parasnath Yadav S/o Tilakdhari Yadav aged about 37 Years R/o Shantinagar Ward, Post- Railway, P.S. Bodhghat, Jagdalpur, Distt. Bastar, Chhattisgarh
6. The Oriental Insurance .Co. Ltd. S/o through- Branch Manager, Jagdalpur, Post- G.P.O., P.S. Kotwali, Distt. Bastar, Chhattisgarh

-----Respondents/Non-applicants

For Appellants	: Mr. Keshav Dewangan, Advocate
For Respondent No. 1&2	: Mr. Vijay Kumar Sahu, Advocate on behalf of Mr. Praveen K. Dhurandhar, Advocate
For Respondent No. 3	: Mr. Dashrath Gupta, Advocate
For Respondent No. 6	: Mr. Pankaj Agrawal, Advocate

Hon'ble Shri Justice Parth Prateem Sahu**Judgement on Board****17/09/2019**

1. The appellants-claimants have filed this instant appeal under Section 173 of

Motor Vehicles Act challenging the impugned award dated 23-10-2013 passed by Motor Accident Claims Tribunal, Bastar, Jagdalpur, Chhattisgarh in claim case No. 92/2012, whereby learned Claims Tribunal dismissed the claim application.

2. Brief facts of the case, in nutshell, are that on 01-05-2011, Jitendra Kumar Jain (Duggad) was traveling with his friend Mahendra Kumar Jain in Centro car bearing registration No. CG17-C-0811 (hereinafter "offending car") driven by non-applicant No. 1/respondent No. 1-Hemant Sanduja, they all were returning to Jagdalpur from Damanjodi (Orissa). When their car has gone a little ahead from Koraput, at that relevant time, the car met with head-on collision with one truck bearing registration number CG.17-H-9181 (hereinafter "offending truck") coming from opposite direction. In the aforementioned accident, Jitendra Kumar Jain (Duggad) died whereas driver of the offending car non-applicant No. 1-Hemant Sanduja and Mahendra Jain suffered grievous injuries over their person. The aforementioned accident was also reported to the Police Station, Koraput, based on which crime bearing No. 33/2011 was registered against non-applicant No. 1 for offences under Sections 279, 337 & 304(A) of the I.P.C.
3. On account of un-timely death of Jitendra Kumar Jain (Duggad), the claimants who are wife, children and parents of the deceased filed claim application before the competent Claims Tribunal claiming Rs. 23,80,000/- as compensation on the grounds mentioned therein.
4. Non-applicant No. 1/respondent No. 1 driver of the offending Car, non-applicant No. 4/respondent No. 4 driver of offending Truck and non-applicant No. 5/respondent No. 5 owner of the offending Truck did not appear before the Claims Tribunal and they were proceeded *ex parte*.
5. Non-applicant No. 2/respondent No. 2- Ramesh Parakh who is owner of the car submitted his reply to the claim application and pleaded that there was no

rash and negligent act on the part of the driver of offending car and he was driving the car slowly and carefully. It was pleaded that the accident caused due to rash and negligent driving of non-applicant No. 4- driver of offending truck and therefore respondent No. 1 & 2 cannot be held liable for payment of any amount of compensation. It was further pleaded that on the date of accident, non-applicant No. 1- driver of offending car was possessing valid and effective driving license and offending car was insured with respondent No. 3/non-applicant No. 3-United India Insurance Company Limited and therefore there can not be any liability for payment of any amount of compensation on non-applicant No. 2/respondent No.2.

6. Non-applicant No. 3 Insurance Company of the offending car submitted its reply to the claim application and while denying the adverse contents, pleaded that the accident took place due to rash and negligent driving of the driver of the offending truck, therefore, non-applicant No. 3-Company is not having any liability for payment of compensation. It was further pleaded that on the date of accident, non-applicant No. 1-driver of the offending car was not possessing valid and effective driving license and any responsibility for payment of amount of compensation would be on the non-applicant No. 4, 5 & 6, owner, driver and the Insurance Company of the offending truck respectively, and therefore no liability could be fasten upon the Insurance Company of the offending car for payment of any amount of compensation.
7. Non-applicant No. 4 & 5 driver and owner of the offending truck respectively, submitted their reply to the claim application and pleaded that there was no negligence on the part of non-applicant No. 4-driver of the offending truck, but the non-applicant No. 1/respondent No. 1-driver of the offending car who drove his car in a rash and negligent manner and dashed the truck from its front side. They have also pleaded that on the date of accident, offending truck was also insured with non-applicant No. 6/respondent No. 6 Insurance Company and

non-applicant No. 4 driver of the offending truck was possessing valid and effective driving license and therefore they are not liable for payment of any amount of compensation.

8. Non-applicant No. 6/respondent No. 6 Insurance Company of the offending truck submitted its reply to the claim application and pleaded that non-applicant No. 4 driver of the offending truck was driving his vehicle cautiously whereas non-applicant No. 1 driver of the offending car, while driving his vehicle rashly and negligently, dashed the truck from its front, hence there is no negligence on the part of the driver of the offending truck. They have also pleaded that on account of head-on collision, there will be contributory negligence on the part of drivers of both the vehicles. He further pleaded that offending truck was being driven in violation of conditions of the insurance policy as on the date of accident non-applicant No. 4- driver of the offending truck was not possessing valid and effective driving license.
9. Learned Claims Tribunal based on the pleadings made by the respective parties has framed as many as 4 issues for consideration including the issue of contributory negligence of the non-applicant No. 4- driver of the offending truck in the accident.
10. Learned Claims Tribunal while appreciating the pleadings and evidence placed on record by respective parties, dismissed the claim application by recording a finding that the claimants failed to prove that non-applicant No. 1- driver of the offending car drove his vehicle rashly and negligently and caused the accident. Learned Claims Tribunal also decided the issue with regard to the contributory negligence as not proved by recording a finding that non-applicant No. 4 and non-applicant No. 5, driver and owner of the offending truck respectively, did not inform the fact of accident to non-applicant No. 6-Insurance company of the offending truck, and the documents of the claiming case has not been submitted to non-applicant No. 6- Insurance company by the non-applicant No.

4 & 5- driver and owner of the offending truck. Learned Claims Tribunal also recorded the fact that according to final report submitted by the police authorities, the accident took place due to negligence on the part of the non-applicant No. 1-driver of the offending car, therefore, non-applicant No. 6-Insurance Company of the offending truck is not liable to compensate the amount to the person who was traveling in offending car.

11.Learned counsel for the appellant submits that the fact of accident has been proved by the claimants by producing the records of criminal case in claim case before the learned Claims Tribunal which is Final Report (Ex. A/1) under Section 173 of Cr.P.C., First Information Report (F.I.R.) (Ex. A/2) which was registered against non-applicant No. 1/respondent No. 1- Hemant Sanduja driver of the offending car.

12.Perusal of the Final Report submitted by the concerned Police Station before the Court of Sub-Divisional, Judicial Magistrate, Koraput also recorded that the accident occurred due to rash and negligent driving of non-applicant No. 1/respondent No. 1.

13.From the pleadings submitted by all the respective parties, accident between both the offending vehicles was not disputed by any of the parties. Claimants, in support of their claim, examined Smt. Rajshri Jain (Duggad) W/o late Jitendra Kumar Jain (Duggad) and one Mahendra Kumar Jain who was also in the offending car at the time of accident. Mahendra Kumar Jain was an eye witness of the accident and was being one of the occupants in the offending car, in his statement, he specifically stated that in his evidence under order 18 Rule 4 CPC i.e. examination-in-chief has stated that the accident took place due to rash and negligent driving of non-applicant No. 1-driver of the offending car. Though, in their cross examination, these witnesses have denied the suggestion of the counsel of respondent No. 6-Insurance Company of the offending truck that the truck was being driven cautiously and slowly by the non-

applicant No. 4-driver of the offending truck and also denied the suggestion that the accident took place on account of rash and negligent act of non-applicant No. 1-driver of offending car by hitting the offending truck from its front side by going on the wrong side of the road. Mr. Abhay Kumar Sinha, who is Branch Manager to non-applicant No. 6-Insurance Company, has been examined for non-applicant No. 5 & 6, who in his statement has stated that they have not conducted any enquiry with respect to the accident.

14. From the aforesaid pleadings of the respective parties, documents available on record submitted by the claimants before the learned Claims Tribunal, particularly, the document with regard to criminal case registered at Police Station, Koraput and the evidence of AW-2 Mahendra Kumar Jain, it is clear that the death of deceased Jitendra Kumar Jain (Duggad) occurred on account of accident between two vehicles. It is also not in dispute that at the time of accident, deceased Jitendra Kumar Jain (Duggad) was traveling as one of the occupants of car and the car was driven by non-applicant No. 1/respondent No. 1. In the aforementioned undisputed fact, deceased cannot be held to be negligent on his part as there was accident between the two vehicles due to head-on-collision, the claimants can claim compensation from the owner, driver and from the Insurance Company of either of the two vehicles and they do not have to prove the negligence on the part of any of the drivers of the vehicles and therefore there would be a composite negligence of the drivers of either of the two vehicles. The issue of composite negligence in case of occupant of the vehicle where accident caused between two motor vehicles has been dealt by hon'ble Supreme Court in the matter of **T. O. Anthony v. Karvarnan and others** reported in **(2008) 3 SCC 748**, and held as under:

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

15. In the aforementioned judgment, the hon'ble Supreme Court, in clear terms, has held that when a person suffered injuries due to negligence on the part of two or more persons then 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.
16. In the case at hand also, the accident between two vehicles is not in dispute and death of Jitendra Kumar Jain (Duggad) who was one of the occupants of one vehicle (car) occurred due to accidental injury is also not in dispute, therefore, case of the appellants-claimants is squarely covered with the aforementioned law laid down by the hon'ble Supreme Court in the matter of **T.O. Anthony** (supra).

17. In view of the aforementioned facts emerging from the records, claim of the appellants-claimants cannot be dismissed. Learned Claims Tribunal committed error in dismissing the claim on the ground that negligency on the part of non-applicant No. 1/respondent No. 1-driver of the offending car could not have been proved.
18. In view of the above observations, finding recorded by the learned Claims Tribunal in dismissing the claim is not sustainable and is hereby set aside. The matter is remitted back to the concerned Claims Tribunal for passing afresh award in accordance with law, after giving an opportunity to all the respective parties to amend their pleadings and placing additional evidence on record.
19. In the result, the appeal is allowed and the matter is remitted back to the concerned Claims Tribunal for passing afresh award. Records be sent back forthwith to the concerned Claims Tribunal.

Sd/-
(Parth Prateem Sahu)
Judge