NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
MAC No. 412 of 2013

The Oriental Insurance Company Ltd., Divisional Manager, Divisional Office Kachahari Chowk Raipur, Distt. Raipur (C.G.).

---- Appellant

Versus

1. Smt. Anupama Tripathi W/o Ratandev Tripathi, aged about 24 years, R/o Awadhpuri Near Ram Mandir, Bhathagaon Raipur, Distt. Raipur (C.G.).
2. Mohammad Amjad, S/o Mohammad Budhan, R/o Shop No.223, Subhash Market Bhilai Distt. Durg (C.G.).
3. M.D. Nijam S/o Budhan Miyan, R/o Kumharpara Sambalpur Orissa.

---- Respondents

MAC No. 513 of 2013

Smt. Anupama Tripathi, Aged about 24 years, R/o-I Awadhram temple, Bhatagaon, Dist. Raipur C.G.

---- Appellant

Versus

1. Mo. Amjad S/o Mo. Budhan Address-Shop No.223, Subhas Market, Bhilai, Dist. Durg C.G.
2. M.D. Nijam S/o Bhudhan Minyan, Kumharpara Sambalpur Orissa.
3. The Oriental Insurance Company Limited, Divisional Manager, Divisional Office-Kachahari Chowk, Raipur.

--- Respondents

MAC No. 412 of 2013

For Appellant	: Mr. Raj Awasthi, Advocate
For Respondent No. 1	: Mr. A.P. Sharma, Advocate
For Respondent No. 2	: Mr. S.P. Sahu, Advocate on behalf of Mr. C.R. Sahu, Advocate
For Respondent No.3	: None

MAC No. 513 of 2013

For Appellant	: Mr. A. P. Sharma, Advocate
For Respondent No. 1	: Mr. S.P. Sahu, Advocate on behalf of Mr. C.R. Sahu, Advocate
For Respondent No. 2	: None
For Respondent No.3	: Mr. Raj Awasthi, Advocate

Hon'ble Shri Justice Parth Prateem Sahu
Judgment On Board

25/06/2019

1. As the above two appeals arise out of same accident and common question is involved in it, therefore, they are being disposed of by this common judgment.

2. Challenge in above two appeals is to the award dated 20/02/2013 passed by Seventh Additional Motor Accident Claims Tribunal, Raipur (C.G.) (hereinafter referred to as 'Claims Tribunal') in Claim Case No.114/2011 whereby learned Claims Tribunal allowed claim application in part of claimant and awarded Rs.12,90,973/- as compensation on all heads.

3. Brief facts relevant for disposal of this appeal are that on 27/04/2011, at about 8.45 A.M., when claimant was traveling on her scooty bearing registration No.CG-04/DS/3034 and reached near Bhathagaon square at Raipur, at that relevant time, one Truck bearing registration No.OR-15/L/5994 (hereinafter referred to as “offending vehicle”) driven by non-applicant No.1 dashed the scooty of claimant. In the aforementioned accident, claimant suffered grievous injuries over her head along with other parts of body. Thereafter, she was taken to Ramkrishna Hospital at Raipur where she took treatment as inpatient from 27/04/2011 to 10/05/2011. Matter was reported to concerned police station, based on which, crime bearing No.136/2011 was registered for offence punishable under Sections 279, 337 and 338 of IPC against non-applicant No.1.

4. After recovering from injuries, claimant filed a claim application before the Claims Tribunal claiming Rs.21,00,000/- as compensation against injuries suffered by her in a motor accident.

5. Non-applicants No. 1 and 2, who are driver and owner of offending vehicle submitted reply to claim application and pleaded that accident took place due to own negligence of claimant when she was crossing four-lane ring road. It was further pleaded that on the date of accident, non-applicant No.1 was possessing valid and effective driving licence and there was valid permit and fitness of offending vehicle, therefore, liability, if any, for the payment of compensation would be on the Insurance Company.

6. Non-applicant No.3/Insurance Company submitted its reply to claim application and denied the fact of issuance of insurance policy in favour of offending vehicle. It was pleaded that there was contributory negligence on the part of driver of scooty i.e. claimant herself and there was no valid and effective driving licence with non-applicant No.1 to drive offending vehicle, therefore, there was violation of conditions of insurance policy.

7. On appreciation of pleadings and evidence placed on record by respective parties, learned Claims Tribunal held that there was contributory negligence on the part of claimant as well as non-applicant No.1 and held the claimant to be contributory negligent to the extent of 30%. Learned Claims Tribunal has also held that there was no violation of conditions of insurance policy and awarded a total sum of Rs.12,90,973/- as compensation after deducting 30% towards contributory negligence on the part of claimant along with interest @ 6% per annum from the date of filing of claim application till its realization.

8. For the sake of convenience, appeal of Insurance Company bearing MAC No. 412/2013 is taken into consideration first.

9. MAC No.412/2013 has been filed by Insurance Company challenging the impugned award on the ground that there was no effective driving licence and permit and further that application filed by Insurance Company before the Claims Tribunal for calling the employee of Regional Transport Office, Durg to prove the licence of non-applicant was illegally dismissed.

10. Learned counsel for the appellant/Insurance Company submitted that learned Claims Tribunal committed error in assessing the income of claimant as Rs.15,000/- per month without there being any cogent and reliable piece of evidence brought on record by claimant and further that claimant failed to prove the loss of income to the extent of 50% before learned Claims Tribunal.

11. I have heard learned counsel appearing for parties and perused the record carefully.

12. So far as first ground raised by learned counsel for appellant/Insurance Company with respect to licence is concerned, Insurance Company has placed on record the reply to the application under Right to Information Act issued by Public Information Officercum-Regional Transport Officer, Durg dated 15/05/2012 wherein Licencing Authority had specifically answered the query that non-applicant No.1- Mohammad Amjad was having licence authorizing him to drive 'Light Motor Vehicle' and 'Heavy Goods Vehicle'. The photocopy of the licence was also placed on record, in which, it has been clearly mentioned that DL No. CG07 20020005605, was issued in the name of Mohammad Amzad, validity period of licence for non-transport vehicle was till 03/07/2021 and the validity period for the transport vehicle has been shown to be effective till 24/09/2013. Perusal of photocopy of back side of licence would show that endorsement with respect to 'Heavy Goods Vehicle' has been made in the year 2010 only.

13. In view of aforementioned document available on record, particularly, reply to the application under Right to Information Act placed on record by Insurance Company itself shows that on the date of accident, non-applicant No.1 was possessing valid and effective driving licence to drive 'Light Motor Vehicle' and 'Heavy Goods Vehicle'.

14. Another ground raised by learned counsel for the appellant/Insurance Company that application filed by Insurance Company for calling Licencing Authority from the Office of Regional Transport Office, Durg to prove licence is concerned, perusal of record would show that the application was filed on 19/10/2012. The said application was decided by learned Claims Tribunal on 13/12/2012 and impugned award has been passed on 20/02/2013. Appellant/Insurance Company has not chosen to challenge the order of rejection of their application under Order 16 Rule 1(3) of CPC whereby their prayer to call the Licencing Authority from the Office of Regional Transport Office, Durg was rejected. Even otherwise, the ground which has been mentioned in the application under Order 16 Rule 1(3) of CPC is only that in the year 2002 when the licence is said to have been issued, there was no system for mentioning the number of licence as CG07.

15. Perusal of licence available on record would show that though licence has been issued on 08/09/2002 i.e. after formation of State of Chhattisgarh, but the endorsement of permission to drive 'Transport Vehicle' has been made only in the year 2010 which is also evident from the photocopy of the back side of licence available on record as licence has been issued after endorsement to drive 'Transport Vehicle' in the year 2010, therefore, suspicion raised by learned counsel for Insurance Company before the learned Claims Tribunal that the licence appears to be forged document is not sustainable, particularly, when the Insurance Company itself has made a query from the Regional Transport Officer for verifying the genuineness of the licence wherein Regional Transport Officer has informed vide intimation dated 15/05/2012 that non-applicant No.1 was possessing licence authorizing him to drive 'Light Motor Vehicle' and 'Heavy Goods Vehicle'.

16. In view of aforementioned facts available on record, argument raised by learned counsel for appellant/Insurance Company that learned Claims Tribunal has curtailed their right to lead evidence, in the opinion of this Court, is not sustainable. The information dated 15/05/2012 was placed on record by appellant/Insurance Company itself, therefore, once the information has been issued under the statutory act by the Government Servant, then its genuineness cannot be questioned.

17. In view of above, in the opinion of this Court, the finding recorded by learned Claims Tribunal that on the date of accident, non-applicant No.1 was possessing valid and effective driving licence need not call for any interference.

18. Other ground raised by learned counsel for the appellant/Insurance Company that on the date of accident, there was no valid permit to drive offending vehicle on public road is concerned, copy of permit is available on record as un-exhibited document at page-10 wherein validity period of National Permit for 'Goods Carriage Vehicle' of Truck bearing No.OR-15/L/5994 has been mentioned to be effective from 17/10/2007 to 16/10/2012, whereas the date of accident is 27/04/2011.

19. From perusal of aforementioned document, it is clear that on the date of accident, there was valid permit with the offending vehicle to ply the vehicle on public road where accident took place.

20. Next ground raised by learned counsel for appellant/Insurance Company that learned Claims Tribunal committed error in assessing the monthly income of deceased on higher side and further holding disability causing loss to the extent of 50% in her earing is without any evidence.

21. So far as employment and the income of claimant is concerned, claimant has filed 'Letter of Intent' (Ex. P-26) dated 04/10/2010 issued from the Office of Arcadia Share and Stock Brokers Pvt. Ltd., which is a letter showing that claimant was appointed on the post of Relationship Manager on the fixed salary of Rs.15,000/-. 'Letter of Intent' (Ex. P-26) also mentions that initial appointment of claimant would be on probation period of six months from the date of joining and her services may be terminated at any time by giving one week notice in writing by either side.

22. The aforementioned document i.e. 'Letter of Intent' (Ex. P-26), though has not been proved by any official of company who on the date of recording of evidence was employed in it but, one person, namely Palash Vishwas has been examined as AW-2 to prove the document. He has admitted in his evidence that at the time of issuance of Ex. P-26, he was working as Zonal Head and he under his signature issued Ex.P-26. He left the job on 30/12/2011. The accident took place on 27/04/2011 and on the date of accident, Palash Vishwas (AW-2) was under the employment with Arcadia Share and Stock Brokers Pvt. Ltd.

23. Palash Vishwas (AW-2) is an author of document Ex. P-26 and Insurance Company has not put any specific question to this witness with regard to employment of claimant with the company on the date of accident, therefore, the ground raised by learned counsel for appellant/Insurance Company that income of claimant of Rs.15,000/- as pleaded in 'Letter of Intent' (Ex. P-26) could not be proved, in the opinion of this Court is not sustainable. The Insurance Company was represented by counsel and even after opportunity failed to put specific question to witness who appeared before the learned Claims Tribunal to prove the appointment of claimant on the fixed salary of Rs.15,000/- in pursuance to 'Letter of Intent' (Ex. P-26), which shows that the appellant/Insurance Company failed to brought any specific evidence on record by not putting the specific question to the witness.

24. Other ground raised by learned counsel for appellant/Insurance Company that learned Claims Tribunal committed error in assessing the loss of income to the extent of 50% due to disability suffered by claimant is concerned, it is not in dispute that claimant suffered permanent disability on her left leg, her left leg was amputated below the knee. It also cannot be lost sight of the fact that on the date of accident, claimant was not doing any work, in fact, she was able to prove the fact of her employment on the post of Relationship Manager with Arcadia Share and Stock Brokers Pvt. Ltd.

25. True it is that claimant has not specifically pleaded that she is unable to perform any work after suffering permanent disability and even she could not able to state that she has been removed from service due to disability suffered by her, but it cannot be lost sight of the fact that the left leg of claimant was amputated below the knee.

26. The claimant has submitted permanent disability certificate (Ex. P-27) issued by District Medical Board, Raipur. The disability certificate was issued by members of five doctors in which, it has been mentioned that claimant suffered 70% permanent disability. In common note mentioned in the disability certificate, it has been categorically mentioned that this condition of claimant is not likely to improve and reassessment is not recommended.

27. Disability certificate (Ex. P-27) is proved by Dr. Shridhar Rao (AW-3), senior member of District Hospital, Pandri, Raipur. Dr. Shridhar Rao (AW-3) specifically stated in his evidence that claimant appeared before him to obtain disability certificate and on examination, he finds that there was amputation of left leg of claimant below the knee and he has issued disability certificate (Ex. P-27) mentioning therein that claimant has suffered 70% permanent disability. The disability suffered by the claimant has been proved by bringing on record the admissible and cogent piece of evidence by the claimant.

28. So far as loss of income in future as claimed by the claimant is concerned, for the purpose of calculating the amount towards permanent disability, income of claimant looking to the nature of employment as pleaded by her and proved by submitting 'Letter of Intent' (Ex. P-26) as well as examination of Palash Vishwas (AW-2), it is evident that she was employed as Relationship Manager with Arcadia Share and Stock Brokers Pvt. Ltd. The work of Relationship Manager is to visit places and to coordinate with other consumers of the company.

29. Looking to the part of body on which, claimant suffered disability and considering the nature of work as pleaded and proved by claimant vide Ex. P-26, it cannot be said that claimant has suffered disability to the extent as mentioned in disability certificate Ex.P-27. Claimant can still be engaged in service, but not for visiting and travelling work which she was doing prior to the accident. As the claimant became disabled and she could not able to walk properly as an ordinary person, therefore, her chances of getting private employment in the present work culture will also be reduced. Even if she could be able to get some job in a private sector, then she may not be get appropriate remuneration and her prospects of promotion in her service career is also reduced.

30. Considering overall facts and circumstances of the case as well as the fact that claimant is a lady, in the opinion of this Court, learned Claims Tribunal has not committed any error in holding that there will be loss of 50% in the earning capacity of claimant.

31. Now, it takes me to deal with the issue raised by learned counsel for claimant in MAC No.513/2013.

32. Learned counsel for claimant submitted that learned Claims Tribunal committed error in holding the claimant to be contributory negligent to the extent of 30% without any specific evidence in this regard, whereas learned counsel for Insurance Company supported the impugned award and submitted that learned Claims Tribunal after considering the material and evidence available on record, arrived at a correct finding.

33. I have perused impugned award wherein learned Claims Tribunal dealt with the issue of contributory negligence at issue No.3.

34. Learned Claims Tribunal on considering the First Information Report (Ex. P-2) as well as considering the one line of evidence of claimant, held that as the accident took place when claimant was trying to cross road and further she saw offending vehicle from a distance of 100 meter.

35. Non-applicants have taken plea of contributory negligence but they have not led any evidence in support of their pleadings. No witnesses have been examined on behalf of non-applicants to prove the plea of contributory negligence. Contributory negligence is a fact which is required to be proved by placing legal and admissible piece of evidence on record by party asserting it.

36. Mere place of accident in the case at hand on a Centre of road and looking to offending vehicle from some distance only will not be sufficient to hold that claimant is also contributory negligent to the accident. Learned Claims Tribunal failed to consider that the place of accident though is a National Highway road, but that road is crossing the heart of City as the place of accident is a very crowed area and road is also a very busy road. Claimant was traveling on a two wheeler i.e. scooty, whereas she was hit by a Truck on a square, but driver of Truck did not appear to choose into witness box to say that there was negligence on the part of claimant also, who could be best witness to prove the fact of contributory negligence. Insurance Company has not made any attempt to call Truck driver/non-applicant No.1 as witness to prove their plea of contributory negligence.

37. The Hon'ble Supreme Court while dealing with the issue of contributory negligence in the matter of **Minu Rout & Anr. v. Satya Pradyumna Mohapatra & Ors.**[1] 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

1 **2013 AIR SCW 5375**

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.”

38. In the matter of **Jiju Kuruvila and others v. Kunjujamma Mohan and others[2],** 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."

39. The Hon'ble Supreme Court in the aforementioned judgments, categorically held that mere position of vehicle and place of accident shown in *Nazri Naksha* itself will not make out a case of contributory negligence, but it is required to be proved by the party asserting it by placing legal and admissible piece of evidence.

---
2 **(2013) 9 SCC 166**

40. Admittedly in the case at hand, no such evidence was brought on record by non-applicants, therefore, finding arrived at by learned Claims Tribunal that claimant is contributory negligent in the accident to the extent of 30% is not sustainable and is hereby set-aside.

41. In view of above discussions, now the amount of compensation requires reconsideration and recalculated, which this Court proposes as under :-

The income of claimant has been found to be proved as Rs.15,000/- per month and it was also held that she suffered 50% loss of earning capacity therefore, loss of earning of claimant is taken as Rs.7,500/- per month i.e. Rs. 90,000/- per annum. On the date of accident, claimant was aged about 24 years, therefore, appropriate multiplier would be 18, which makes the total loss of earning as Rs.16,20,000/-. The claimant will also be entitled for a sum of Rs.1,69,247/- towards medical expenses awarded by learned Claims Tribunal, Rs.5,000/- towards special diet & conveyance and Rs.50,000/- towards pain and suffering awarded by learned Claims Tribunal.

42. Now claimant will be entitled for total sum of Rs.18,44,247/- instead of Rs.12,90,973/-. This amount of compensation shall carry interest at the rate of 6% per annum from the date of filing of claim application till its realization. The other conditions imposed by Claims Tribunal shall remain intact.

43. In the result, appeal (MAC No.412/2013) filed by Insurance Company is dismissed and appeal (MAC No.513/2013) filed by claimant is allowed in part and impugned award passed by learned Claims Tribunal is modified to the extent indicated herein-above.

Sd/-

(Parth Prateem Sahu)
Judge

Yogesh