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HIGH COURT OF CHHATTISGARH, BILASPUR

Miscellaneous Appeal (Civil) No. 157 of 2014

- Smt. K.V. Bharti @ K. Bharti wife of Shri K. Ramarao, aged about 53 years, R/o Qr.No. 16/B, Type- 2, Railway Colony, Bhilai-03, P.S. Bhilai-3, Civil & Revenue District Durg (C.G.) **(Deceased)** through legal heirs:-

1. K. Ramarao S/o Late V.K. Rao, aged about 46 years
2. K. Shrikant S/o Shri K. Ramarao, aged about 26 years

Both R/o Qr.No. 16/B, Type-2, Railway Colony, Bhilai -03, P.S. Bhilai-3, Civil & Revenue, District Durg (C.G.)

---- Appellants/Claimants

Versus

1. Shrinivas Reddy S/o S.V. Reddy, aged 23 years, R/o Ward No. 23, New Nirmala School Dalli Rajhara, Tahsil Balod, P.S. Balod, Civil & Revenue District Durg (Now Balod) C.G.)
(Driver & Owner)
2. Chola Mandalam M.S. General Insurance Company Ltd., Branch Office First Floor, Hinduja Complex No. 22, Parasnagar Chowk, Near Railway Line, Devendra Nagar, Raipur, Civil & Revenue, District Raipur (C.G.)
(Insurer)
3. K.V. Prasadrao S/o K. Ramarao, aged about 33 years, R/o C-303, Mrudang, Sector-1, Basant Nagri, Vasai Road (East) P.S. Thane, District Thane, Civil & Revenue District Thane, Maharashtra
4. K. Pushpa W/o M. Satish, aged about 30 years, R/o Makan No.1766, 2nd Floor, Main First Stage, Kumar Swami layout, Swati Nursing Home Side Apartment, Dayanand Sagar College ke pass Banglour, Civil & Revenue District Banglour Karnataka

---- Respondents/Non-applicants

For Appellants	:	Shri Punit Ruparel & Shri Kalpesh Ruparel, Advocates
For Respondent No.1	:	None
For Respondent No.2	:	Shri Abhishek Sinha & Shri D.L. Dewangan, Advocates
For Respondents No. 3 & 4	:	None

Hon'ble Shri Justice Gautam Chourdiya, J

Judgment on Board

18.02.2019

1. The present is an appeal under Section 173 of the Motor Vehicles Act, 1988 preferred by the legal heirs of deceased- Smt. K.V. Bharti @ K. Bharti W/o K. Ramarao, seeking enhancement of compensation awarded by the Motor Accident Claims Tribunal, Durg, District Durg vide award dated 09.01.2012 passed in Claim Case No. 03/2010 and also challenging contributory negligence held by the

Tribunal to the extent of 50% on the part of deceased- Smt. K.V. Bharti. After the death of Smt. K.V. Bharti, her husband and son continued the proceeding as legal heirs.

2. Injured/Claimant- Smt. K.V. Bharti @ K. Bharti (since deceased), claimed compensation of Rs.6,00,000/- by filing a claim petition under Section 166 of the Motor Vehicles Act for the injuries sustained by her in the motor accident.

3. The claim petition had been filed by injured/Claimant- Smt. K.V. Bharti @ K. Bharti on 22.01.2010 before the Tribunal and during the pendency of claim petition, she died on 10.10.2010.

4. Facts of the case, in brief, are that on 24.09.2009 at about 12:30 pm, deceased- Smt. K.V. Bharti @ K. Bharti while crossing the road for coming after her treatment from Jyoti Hospital, Charouda to her residence at Bhilai, non-applicant No.1, driver & owner of the offending vehicle- Maruti Van bearing registration No. CG-07/M/8075 & insured with non-applicant No.2, driving the said Maruti Van in a rash and negligent manner, dashed Smt. K.V. Bharti. As a result thereof, Smt. K.V. Bharti sustained grievous injuries and bones of her both legs & both hands were fractured.

5. The learned Tribunal, in the impugned award, has assessed total compensation of Rs.2,84,395/-. However, holding deceased- Smt. K.V. Bharti contributory negligent to the extent of 50%, the Tribunal has awarded a total compensation of Rs.1,42,197/- in favour of legal heir of Smt. K.V. Bharti with interest @ 7% per annum from the date of application till its realization. The Tribunal has also directed that non-applicant No.2/Insurance Company along with non-applicant No.1/driver & owner are jointly and severally liable for payment of compensation to the Claimants/Appellants.

6. Learned counsel for the Appellants/Claimants submits that no any evidence has been adduced by the Insurance Company regarding contributory negligence on the part of injured/deceased- Smt. K.V. Bharti, therefore, the Tribunal has erred in holding the deceased guilty of negligence to the extent of 50% and thereby

deducting 50% of the amount of compensation awarded by it.

7. On the other hand, learned counsel for the Respondent No.2/Insurance Company supports the impugned award and submits that the Tribunal considering all the relevant aspects of the matter has rightly awarded compensation which needs no interference by this Court as also the Tribunal has rightly held contributory negligence on the part of injured- Smt. K.V. Bharti.

8. Heard learned counsel for the parties and perused the material available on record.

9. Raja Jain (AW-2), who is the eye-witness of the accident, has specifically proved this fact that on the date of accident, after treatment from Jyoti Hospital, Charouda, Smt. K.V. Bharti was going towards Bhilai-3 from Charouda and when she was just crossing the road, non-applicant No.1, driver of the offending vehicle- Maruti Van No. CG-07/M/8075, driving the same in a rash and negligent manner, dashed Smt. K.V. Bharti due to which she sustained grievous injuries and fell down.

10. K. Ramarao, husband of Smt. K.V. Bharti, has also been examined as AW-1, but he is not an eye-witness of the accident.

11. Shrinivas Reddy, driver of offending vehicle, examined himself as NAW-1. He stated, in para-1, that at the time of accident, injured- Smt. K.V. Bharti was suddenly started crossing service road and came on four-lane road, had the injured not crossing the road, the accident would not have occurred. He stated that he was driving his Maruti Van at a speed of 40 kilometre per hour. He admits this fact that Smt. K.V. Bharti was standing on the road in front of Jyoti Hospital and there was heavy traffic. This fact is also supported by Raja Jain (AW-2) that at the time of accident, injured- Smt. K.V. Bharti was just coming from Jyoti Hospital and she was moving towards Bhilai-3 service road.

12. It is not in dispute that the accident occurred on 24.09.2009, while injured- Smt. K.V. Bharti was crossing the road. As per FIR (Ex.-P/1) and charge-sheet, it is seen that offence under Section 279, 337 and 338 of IPC was registered against

non-applicant No.1 by the police. FIR goes to show that it is non-applicant No.1 who was driving the offending vehicle in a rash and negligent manner which resulted in unfortunate accident. Raja Jain (AW-2), who is the eye-witness of the accident, has specifically proved this fact that the driver of the offending vehicle driving the same in a rash and negligent manner, dashed Smt. K.V. Bharti due to which she sustained grievous injuries and fell down. NAW-1-Shrinivas Reddy, driver of offending vehicle has specifically stated that he was driving his Maruti Van at a speed of 40 kilometre per hour. If non-applicant was driving the vehicle when such a moderate speed, he could have easily controlled the vehicle and thereby avoided the occurrence of the accident. Only on the ground that the accident occurred on four-lane road, there was no zebra-crossing and Smt. K.V. Bharti was crossing that road, it would not be justifiable to hold Smt. K.V. Bharti responsible for the accident to any extent. The finding of the Tribunal regarding contributory negligence of Smt. K.V. Bharti appears to be based on mere presumption and surmises. Therefore, considering overall facts and circumstances of the case, nature and quality of evidence adduced by the parties as also the manner in which accident occurred, this Court is of the view that the Tribunal was not justified in holding Smt. K.V. Bharti contributory negligent to the extent of 50% and accordingly it is held that the accident occurred due to negligence on the part of non-applicant No.1 only.

13. In the result, the appeal is allowed in part with modification in the impugned award to the above extent that it is the Insurance Company/non-applicant No.2 which is liable jointly and severally alongwith along with non-applicant No.1/driver & owner to pay entire amount of compensation of Rs.2,84,395/- alongwith interest as awarded by the Tribunal to the Claimants/Appellants i.e. legal heirs of Smt. K.V. Bharti. No order as to costs.

Sd/-
(Gautam Chourdiya)
Judge