

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1188 of 2014

1. Seeman S/o Khuti Aged 35 (now 40) Years, Caste- Mahra
2. Smt. Semalwati @ Semalti W/o Seeman Aged 30 (now 35) Years
3. Amar S/o Seeman Aged 18 (now 23) Years
4. Ku. Anshuni S/o Seeman Aged 15 (now 20) Years

All R/o Navagaon, Parpa, P.S. Parpa, Tah. Tokapal, Distt. Bastar C.G

---- Appellants

Versus

1. Shyamlal, s/o Dhaniram, aged 47 years (Now Deceased) Through Legal Heirs:
 - 1(a) Smt Munni, w/o late Shyamlal, aged 55 years
 - 1(b) Kailash S/o late Shyamlal, aged 30 years
 - 1(c) Krishna, S/o late Shyamlal, aged 24 yearsAll R/o Vill Navagaon, Parpa, PS- Parpa, Tah Tokapal, Distt Bastar, (CG) Owner and Driver, Vehicle No.CG-17/K-4135
2. Branch Manager, Bajaj Allianz General Insu.Co.Ltd., Shivmohan Bhavan, Vidhan Sabha Road, Pandri, Distt. Raipur, Chhattisgarh

---- Respondents

For Appellants	: Ms Arpana Singh, Advocate
For Respondents-1a to 1c	: Shri PK Tulsyan, Advocate
For Respondent- 2	: Shri Amit Buxy, Advocate on behalf of Shri Abhishek Sinha, Advocate.

Hon'ble Shri Justice Parth Prateem Sahu

Order on Board

29.01.2019

1. By this appeal, the appellants have assailed the impugned award dated 28.08.2014 passed by the First Additional Motor Accident Claims Tribunal, Jagdalpur (for short, 'Claims Tribunal') in Claim Case No.51 of 2014 wherein the claim filed by the appellants/claimants is dismissed.
2. Brief facts of the case for disposal of this appeal are that on 09.05.2008 Shyamlal, respondent- 1 herein went along with Akbar to Jagdalpur on his motorcycle bearing No.CG 17-K-4135 to bring grocery

items. When they were returning from Jagdalpur to village with grocery items, on their way Shyamlal tried to overtake one truck bearing No. CG-17-5118, at that relevant time due to rash and negligent act of Shyamlal, Akbar, who was made to sit as pillion rider on the motorcycle and holding some grocery items, fell down and sustained severe head injuries. He was taken to Maharani Hospital at Jagdalpur for his treatment, where he succumbed to the injuries during the course of treatment.

3. On account of untimely death of Akbar, the claimants who are his parents, brother and sister have filed claim application seeking compensation of Rs.15,33,000/- in total from non-applicants therein on the ground that deceased Akbar was earning about Rs.2,000/- per month by helping his father in his work and after death of Akbar, his family members were deprived of dependency.

4. Respondent- 1 who is owner of motorcycle submitted reply to the claim application and denied the adverse pleadings made in the application. He further pleaded that the claim application is liable to be dismissed on account of non-jointer of necessary parties; the accident occurred not on account of negligence on his part, but it was due to negligence on the part of truck driver who drove the vehicle rashly and negligently and dashed the motorcycle on its back due to which Akbar fell down and sustained injuries. It has also been pleaded that the accident was reported immediately to the concerned Police Station and as the offending vehicle and its driver could not be traced out, closure report has been produced before the concerned Court. He also pleaded that on the

date of accident he was having valid and effective driving license to drive the vehicle and pleaded for his exoneration from liability, if any.

5. Respondent- 2 Insurance Company also denied adverse claim and pleaded that on the date of accident Shyamlal was not having valid and effective driving license and the accident took place due to rash and negligent driving of truck, that dashed the motorcycle on its backside. Further it was pleaded that owner, driver and insurer of that truck were not included as party to the claim application, therefore, it is liable to be dismissed.

6. Learned Claims Tribunal on appreciation of pleadings and evidence available on record dismissed the claim application holding that claimants could not prove rash and negligent driving of Shyamlal/respondent- 1.

7. Learned counsel for the appellants submits that it is specifically pleaded that deceased Akbar on the date of accident was travelling as pillion rider on the motorcycle driven by Shyamlal/respondent- 1. It has also been specifically pleaded that at the time of accident Shyamlal/ driver of the motorcycle tried to overtake the truck rashly and negligently due to which deceased Akbar fell down and sustained grievous head injury and succumbed to the injury.

8. Appellant-1 entered witness box and supported the pleadings and categorically stated that his son Akbar went along with Shyamlal for the purpose of holding kirana items purchased from Jagdalpur and while returning to his village, accident took place. One Ramthakur was also examined as AW- 2 who stated himself to be an eyewitness to the

accident. He stated that at the time of accident deceased was sitting at rear seat of the motorcycle holding a bag of sugar, mustard oil and biscuits in polythene bag. He further stated that when Shyamlal tried to overtake the truck, Akbar, who was sitting as pillion rider on motorcycle fell down on his back along with grocery items he was carrying.

9. Insurance Company examined two witnesses namely, Amendra Dixit (NAW-1), Investigation Officer and Pravin Sijariya (NAW-2), Law Officer. In their evidence they categorically stated that on the basis of statement of Shyamlal it revealed that the accident took place when deceased Akbar was travelling as pillion rider; at that relevant time one truck dashed motorcycle and they fell down. Even the copy of FIR Ex.A/2, Final Report Ex.A/1 also reflects that the accident took place between truck and motorcycle.

10. After considering oral evidence of the respective parties it is clear that the deceased on the date of accident was travelling on the motorcycle as pillion rider and he met with an accident and succumbed to the injuries. The claimants have specifically pleaded that accident took place due to rash and negligent driving of Shyamlal/respondent-1, driver of the motorcycle. Shyamlal could not be examined before learned Claims Tribunal but from the facts and evidence available on record and even if the evidence led by the Insurance Company is taken into consideration, it makes clear that deceased-Akbar died in an accident where motorcycle and truck, both vehicles are involved. In that event also, deceased being pillion rider on the two wheeler can claim compensation from either of the two vehicles ie motorcycle or truck that involved in the accident.

11. Undisputedly, motorcycle on which deceased was travelling as pillion rider and driven by Shyamlal met with an accident. Learned Claims Tribunal in para 15 of the award also considered that Shyamlal also sustained injuries in the accident but he chose not to appear before the Tribunal.

12. The issue of negligence came up for consideration before Hon'ble Apex Court in the matter of **TO Anthony Vs Karvarnan and others** reported in (2008) 3 SCC 748. While dealing with contributory and composite negligence, it has 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 wrong doers, it is said that the person was injured on account of the composite negligence of those wrong-doers. In such a case, each wrong doer, 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 wrong-doer separately, nor is it necessary for the court to determine the extent of liability of each wrong-doer 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 of 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 stands reduced in proportion to his contributory negligence.

7. Therefore, when two vehicles are involved in an accident, and one of the drivers claims compensation from the other driver alleging negligence, and the other driver denies negligence or claims that the injured claimant himself was negligent, then it becomes necessary to consider whether the injured claimant was negligent and if so, whether he was solely or partly responsible for the accident and the extent of his responsibility, that is, his contributory negligence. Therefore where the injured is himself partly liable, the principle of 'composite negligence' will not apply nor can there be an automatic inference that the negligence was 50:50 as has been assumed in this case. The Tribunal ought to have examined the extent of contributory negligence of the appellant and thereby avoided confusion between composite negligence and contributory negligence. The High Court has failed to correct the said error."

13. Admittedly, in this case deceased-Akbar was not a driver of any of the two vehicles involved in the accident, in fact he was a pillion rider therefore, he can claim against any vehicle showing it to be composite negligence on its part. Even otherwise, in view of the fact that the pleadings made in the claim application against Shyamlal, driver of the motorcycle have not been specifically denied by him in his reply to the claim application nor he got himself examined before learned Claims Tribunal as witness. Therefore, learned Claims Tribunal had committed an illegality in holding that the claimants have failed to prove that the accident took place due to rash and negligent act of driver of motorcycle.

14. The above finding recorded by learned Claims Tribunal is contrary to the law laid down by Hon'ble Apex Court in the matter of **TO Anthony**

(*supra*), which is not sustainable in the eyes of law and it is liable to be set aside.

15. In view of above discussions, the impugned award passed by learned Claims Tribunal is set aside and the matter is remitted back to it for deciding the case afresh keeping in mind the law laid down by Hon'ble Supreme Court in the matter of **TO Anthony** (*supra*).

16. Needless to say that parties will be at liberty to amend their pleadings, lead further evidence if any, before learned Claims Tribunal. Learned Claims Tribunal will pass the award afresh after granting opportunity of hearing to all the parties.

17. Looking to the date of accident and also the date of award, it is expected that learned Claims Tribunal will make all its efforts to decide the claim application within a period of four months from the date of production of certified copy of this order and receipt of record.

18. Records of claim case be sent forthwith to the Claims Tribunal concerned.

19. Appeal is partly allowed.

Sd/-
(Parth Prateem Sahu)
JUDGE