

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 281 of 2013

- Jaber Ali S/o Khuda Bhagat Ali Aged About 32 Years R/o Supela Faridnagar, Bhilai, Tah. And Distt. Durg C.G.

---- Appellant

Versus

1. Manohar Kosariya S/o Vikai Kosariya Aged About 36 Years R/o Village - Krishnanagar, Ganesh Chowk, Supela, Bhilai, Tah. And Distt. Durg C.G. (driver)
2. Ranjit Singh S/o Late Jaagir Singh Aged About 37 Years R/o Street-7, Qtr.No. 5/A, Sector-4, Bhilai, Tah. And Distt. Durg C.G.
3. Branch Manager, Shriram General Insurance Co. Ltd., Durg C.G.
4. Motiram S/o Ferha Ram Dhruv Aged About 45 Years R/o Kalinagar, Pandri, P.S. Mowa, Pandri, Distt. Raipur C.G.
5. Sujata Suri Sethi W/o Jawahar Suri Sethi R/o Plot No. 305/F.T., Royal G.T. Shankarnagar, Raipur C.G.
6. Branch Manager, The Oriental Insurance Co. Ltd., Durg C.G.

---- Respondents

For Appellant	:	Shri Vedant Bhelonde, Advocate on behalf of Shri PR Patankar, Advocate.
For Respondent No.3	:	Shri SK Kushwaha, Advocate.
For Respondent No.6	:	Shri H.P. Agrawal, Advocate.
For other Respondents	:	None.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

01/04/2019:

This appeal is by the injured claimant under Section 173 of the Motor Vehicles Act, 1988 against the award 23.11.2012 passed by 4th Additional Motor Accident Claims Tribunal, Durg in Claim Case No.142/2011 awarding total compensation of Rs.1,48,510/- with

interest @ 6% per annum from the date of application till realization, fastening liability on the non-applicants No. 1 to 3 jointly and severally.

02. As per claim petition, on 13.7.2010 at about 11.30 am claimant Jaber Ali was returning from Raipur by truck. On the way, in order to attend the call of nature, he stopped the truck by the side of the road and was crossing the road. However, seeing one car Indica bearing No. CG 04 H 4279 coming towards the claimant, he stood on the divider, but unfortunately as the car was hit from the back side by truck bearing No. CG 07 C 5277, the car got uncontrolled and hit the claimant, as a result of which he suffered grievous injuries. At the time of accident, the said car was being driven by non-applicant No.4 Motilal, owned by non-applicant No.5 Sujata Suri Sethi and insured with non-applicant No.6-Oriental Insurance Co. Ltd. The truck was being driven by non-applicant No.1 Manohar Kosariya, owned by non-applicant No.2 Ranjit Singh and insured with non-applicant No.3 Shriram General Insurance Co. Ltd.

03. On claim petition being filed by the injured claimant under Section 166 of the Motor Vehicles Act, the Tribunal considering the evidence led by the parties passed an award as mentioned above.

04. Learned counsel for the appellant/claimant submits that though he has assailed the award on various grounds mentioned in the appeal, however, he is not pressing all those ground and is confining his argument only to the extent that the Tribunal was not justified in deducting 50% from the total compensation assessed by it towards contributory negligence on the part of the claimant. He submits that as per evidence available on record, it stands proved beyond doubt that on the date of accident the claimant was standing on the divider while crossing the road, he had taken all due care and caution in doing so and the accident occurred due to rash and negligent driving of the offending vehicle truck which hit the car going in front of it and in turn, the car hit the claimant. He submits that reliance placed on the decision in *Halkibai and another Vs. Managing Director, Rajasthan State Road Transport Corporation and another, 2005(1) ACC 53 (MP)*, by the Tribunal in para-12 of the impugned award is misplaced

because in the said case, the deceased while crossing the road did not take proper care whereas in the instant case, the claimant apprehending the danger stood on the divider and had taken all possible care to avoid the accident. Therefore, there was no contributory negligence on the part of the claimant and the claimant is entitled for the entire amount of compensation as assessed by the Tribunal.

Placing reliance on the decision of this Court in the matter of ***Kaliram Sahu and others Vs. Chamanlal Dewangan and others, 2014(1) CGLJ 431***, learned counsel for the claimant submits that the burden lies on the insurance company to prove that the claimant was in any manner negligent in causing the accident. However, no such evidence has been adduced by the insurance company in this case.

05. On the other hand, learned counsel for respondent No.3/insurance company supports the impugned award and submits that the Tribunal considering all the relevant aspects of the matters has rightly awarded compensation holding the claimant equally responsible for the accident, which needs no interference by this Court.

06. Learned counsel for respondent No.6 has duly assisted the Court and supported the impugned award.

07. No counter appeal has been filed by the respondents as submitted by learned counsel for the parties.

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

09. As per FIR (Ex.P/1), the accident occurred due to sole negligence on the part of driver of the offending vehicle i.e. non-applicant No.1 Manohar Kosariya. There is no contrary evidence adduced by the insurance company/non-applicant No.3 showing that the claimant was in any manner negligent which contributed to the accident. As per statement of injured claimant Jaber Ali (AW-1), on 13.7.2010 while he was crossing the road, he saw one Indica Car bearing No. CG 04 H 4279 coming towards him, he stood on the

divider, however, as the said car was dashed from behind by truck No. CG 07 C 5277, the car hit him as a result of which he suffered grievous injuries. In cross-examination, nothing could be elicited from him by the non-applicants which could indicate that he was in any manner negligence and contributed to the unfortunate accident. In para-14 he states that at the time of accident, his one leg was on the divider and other was on the road. NAW-1 Manohar Kosariya, driver of the offending truck, also admits in para-1 that the claimant was standing on the divider, he was hit by the Indica car, however, he denied any accident by his truck.

10. This Court finds substance in the argument of counsel for the appellant that reliance placed on the decision in *Halkibai* (supra) by the Tribunal for holding the claimant contributory negligent is misplaced because in the said case, the deceased while crossing the road did not take proper care whereas in the instant case, the claimant apprehending the danger stood on the divider and had taken all possible care to avoid the accident.

11. Considering the facts and circumstances of the case, the overall evidence available on record, the manner in which the accident occurred as also the decision of this Court in *Kaliram Sahu* (supra), this Court is of the opinion that there is nothing to show contributory negligence of the claimant and therefore, the Tribunal was not justified in deducting 50% from the total amount of compensation assessed by it towards contributory negligence of the claimant.

12. In the result, the appeal is allowed in part with modification in the impugned award to the extent that the claimant is entitled for the entire amount of compensation of Rs.2,97,019/-, as determined by the Tribunal, with interest @ 6% per annum from the date of claim petition till realization. However, rest of the conditions of the impugned award shall remain intact.

Sd/

**(Gautam Chourdiya)
Judge**