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HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 664 of 2014**

Vijay Kumar S/o Gambhir Prasad Aged About 45 Years, Caste- Panika, R/o Kothari-Side, Godripara, Chirimiri Block- 10/9, P.S. And Tah. Chirimiri, Civil & Distt. Koriya C.G.

---- Appellant**Versus**

1. Ishwar Dayal Kashyap S/o Dilip Kumar Kashyap Aged About 45 Years R/o New Mines-44, Kachhi-Quarter, Podi, P.S. Podi, Civil Distt. Koria C.G.
2. The Oriental Insurance Company Limited, through ts Branch Manager, Branch Office- Ambikapur, Surguja, Civil and Revenue- Distt. Surguja C.G.
3. Shree Ram General Insu. Co. Ltd. Thru- Its Branch Manager, Head Office- E/8, E.P.I.P. Ralco Industrial Area, Sitapura, Jaipur Rajasthan.

---- Respondents

For Appellant	:	Shri Jameel Akhtar Lohani, Advocate.
For Respondent No.1.	:	Shri Sameer Singh, Advocate.
For Respondent Nos.2	:	Shri Akash Shrivastava, Advocate on behalf of Anumesh Shrivastava, Advocate.
For Respondent Nos.3	:	Shri Raghvendra Verma, Advocate on behalf of Shri Deepak Gupta, Advocate.

Hon'ble Shri Justice Parth Prateem Sahu**Judgment on Board****21/06/2019**

1. Appellant has filed this miscellaneous appeal under Section 173 of the Motor Vehicles Act, 1988 (for short ' the Act of 1988 ') challenging legality and validity of award dated 28.04.2014 passed by the learned Additional Motor Accident Claims Tribunal, Baikunthpur District Koriya, Chhattisgarh (for short ' the Tribunal ')

in Claim Case No.102/2013 whereby the Tribunal allowed claim application in part and awarded total sum of Rs.1,33,000/- as compensation, in an injury case, alongwith interest @ 8% p.a. and fastened liability upon non-applicant No.1/appellant herein to pay amount of compensation to claimant.

2. Brief facts necessary for disposal of this appeal are that on 16.04.2010 at about 8 pm, Ishwar Dayal Kashyap (injured) was returning to his home i.e. New Mines, Podi, from his dispensary on his Motorcycle bearing registration No.CG15/9427 (hereinafter shall be referred to as 'motorcycle'). On the way, near Kali Badi Mandir one Motorcycle bearing registration No.CG16/D/3219, (hereinafter shall be referred to as "the offending vehicle") driven by non-applicant no.1/appellant-herein, dashed against motorcycle of claimant as a result of which said Ishwar Dayal Kashyap suffered severe injuries on various parts of his body and his right leg was fractured. He was taken to hospital at Chirmiri where looking to grievousness of injuries he was referred to Bilaspur and thereafter he was taken to Dr. Dheer's hospital, Bilaspur where a steel plate was inserted in his right leg by way of surgery. Matter was reported to Police Station – Chirmiri based on which criminal case was registered against driver of offending vehicle.
3. On account of motor accidental injuries suffered by him, claimant/respondent No.1 filed claim application under Section 166 of the Act of 1988 before competent claims Tribunal claiming Rs.16,00,000/- as compensation under various heads on the ground mentioned therein.
4. Non-applicant No.1-owner-cum-driver of offending vehicle submitted reply to claim application and denied all adverse pleadings made therein. It was pleaded that on the date of accident, he was returning to his home from G.M. Complex, Podi on his Motorcycle bearing registration No.CG16/D/3219

alongwith his friend Pawan Kumar and when he reached near Kali Badi Mandir, claimant came on his motorcycle with high speed and dashed against his motorcycle. In the aforesaid accident, he and one Pawan Kumar, who was travelling with him as pillion rider, also suffered grievous injuries. It was further pleaded that on the date of accident, driver of offending vehicle was possessing valid and effective driving license and said vehicle was insured with non-applicant No.2-, therefore, liability if any would be of insurance company. It was further pleaded that on the date of accident, injured driver of motorcycle was not possessing valid and effective driving license, therefore, he is not entitled for any amount of compensation.

5. Non-applicant no. 2-Oriental Insurance Company submitted reply to claim application and denied all the adverse averments made therein. It was pleaded that accident took-place due to self negligence of claimant himself. The amount of compensation claimed by the claimant is on higher side. On the date of accident neither claimant nor driver of offending vehicle was possessing valid and effective driving license and as the vehicles were plied in breach of condition of insurance policy, therefore, non-applicant No.2- Insurance Company is not liable to pay any amount of compensation to the claimant.
6. Non-applicant no.3-Shriram General Insurance Company submitted reply to claim application and pleaded that non-applicants No.1 & 2 were liable to pay amount of compensation. It was also pleaded that on the date of accident, driver of offending vehicle was not possessing valid and effective driving license, and as offending vehicle was plied in breach of condition of insurance policy, therefore, insurance company is not liable to indemnify insured.
7. On the basis of pleadings and evidence placed on records by respective parties, the Tribunal arrived at findings that appellant failed to prove

contributory negligence on the part of claimant himself and on the date of accident driver of offending vehicle was not having valid and effective driving license. On the basis of above findings, the Tribunal allowed claim application in part, awarded total sum of Rs.1,33,000/- as compensation to claimant and exonerated Insurance company for its liability.

8. Learned counsel for the appellant submits that the Tribunal committed error in recording the finding that appellant failed to prove the facts of contributory negligence, accident took place due to head-on collusion between two motorcycles, as is evident from the pleadings made by claimant in his claim application, and therefore claimant-driver of motorcycle is also responsible for the accident. He further submitted that the Tribunal committed error in awarding excessive amount of compensation looking to the injuries suffered by claimant.
9. Per contra learned counsel for respondent no.1/claimant supported the impugned award and submitted that claimant sustained grievous injuries in the aforementioned accident as a result he was subjected to undergo surgery and a metal plate was also inserted in his right leg. Thus, the total amount of compensation awarded by the Tribunal to the claimant cannot be said to be excessive or bonanza warranting interference of this Court.
10. Counsel for other respondents supported the impugned award.
11. I have heard learned counsel for the parties and perused the record.
12. As regards the first ground raised by learned counsel for appellant that there was contributory negligence on the part of claimant himself. Hon'ble Supreme Court in the matter of **Minu Rout and Anr. Versus Satya Pradyumna Mahapatra & Ors** reported in **2013 10 SCC 695**, wherein one of the issue is with regard to the contributory negligence held as under :-

“17. The Tribunal, on appreciation of the oral and documentary evidence, has recorded the erroneous finding by placing strong reliance upon the charge- sheet, Ext.1 without considering the fact that the criminal case was abated against the deceased and further has made observation in the judgment that the appellants had not produced the FIR. Therefore, it has held that there was 50% contributory negligence on the part of the deceased driver in causing accident. 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 IPC read with the provisions of the M. V. Act. The Insurance Company, though claimed permission under 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 Sushil 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, Ext.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 P.W.2 and P.W.3 in their cross-examination and placed reliance on them to record the finding on issue.”

13. Hon'ble Supreme Court in another judgment between **Jiju Kuruvila Versus Kunjujamma Mohan** reported in **(2013) 9 SCC 166** held as under :-

“20.05. 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 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”

14. In the light of aforementioned law laid down in the matters of ***Minu Rout (supra)*** and ***Jiju Kuruvila (supra)***, fact of contributory negligence is to be required to be proved by producing reliable and admissible piece of evidence by parties ascertaining it. If the facts and circumstances of present case is looked into, it is evident that after the accident, appellant has not made any complaint to any authority or police station with respect to the accident and on the part of contributory negligence of claimant. Though general plea of contributory negligence was taken by appellant but in support thereof he has not examined even Pawan Kumar, who is his friend and accompanied with him as pillion rider on the date of accident in the witness box or not made any effort to bring any independent witness to establish plea of contributory negligence on the part of claimant. Thus, except oral statement of appellant, there is nothing on record to show that on the date of accident claimant was driving his motorcycle in high speed and dashed against his motorcycle. Fact of contributory negligence has to be specifically pleaded and proved by the party asserting it. Merely on the ground that accident had taken place due to head-on collision between two vehicles, it cannot be inferred that there must have been negligence on the part of deceased driver. In these circumstances finding of the Tribunal that there was no contributory negligence on the part of deceased driver being based on proper appreciation of evidence available on record cannot be faulted with.

15. Coming to next ground raised by learned counsel for appellant that the Tribunal committed error in awarding excessive amount of compensation to the claimant. Perusal of impugned award would show that the Tribunal has awarded an amount of Rs.57,000/- towards medical expenses and Rs.16,112/- towards traveling and lodging expenses. The Tribunal has also awarded an amount of Rs.20,000/- for pains and sufferings.
16. So far as the amount of compensation awarded towards medical expenses, traveling & diet is concerned, looking to nature of injuries suffer by claimant, which required him to undergo surgery, in the considered opinion of this Court the Tribunal has not committed any error in awarding amount of compensation under aforesaid two heads. Further, considering the nature of injuries sustained by claimant, he must have suffered pains and sufferings and therefore, amount of compensation awarded under the head of 'pains and sufferings' cannot be also said to be on higher side.
17. So far as the amount of compensation awarded under the head of loss of income during the period of treatment is concerned, perusal of discharge certificate (Ex.P-6) filed by claimant would show that he remained admitted in Tejkaar Nursing Home w.e.f. 17.4.2010 to 24.4.2010. Initially, he was admitted in said nursing home only for 8 days. Other OPD / discharge tickets submitted by claimant as Ex.P-7 do not contain specific date of discharge. Hence, it can be safely presumed that after first discharge on 24.4.2010, claimant might have again visited in hospital on number of occasions.
18. From perusal of documents available on record it is not evident that claimant took treatment continuously from the date of accident till November and he could not able to perform his work during this period. Even from perusal of evidence of claimant with regard to his inability to do his work till the date of his

examination appears to be an incorrect statement made by him as on the date of examination he has stated that he can do work of para-medical even after said accident.

19. In view of aforementioned statements and looking to medical documents with regard to treatment taken by claimant, there is no specific evidence available on record that he could not be able to perform his work continuously for a period of eight months, particularly when the claimant himself has pleaded that he was doing work of medical practitioner, which is table job work. Hence, looking to overall facts and circumstances of this case, this Court is of the opinion that it will be appropriate and reasonable to award loss of income for a period of four months. Thus, by taking monthly income of claimant as Rs.5,000/- per month, as assessed by the Tribunal, he is held entitled for an amount of Rs.20,000/- (5000 x 4) for loss of income during treatment period.
20. In view of above, now claimant will be entitled to Rs.1,13,112/- (57,000+20,000+16,112+20,000) instead of Rs.1,33,000/-. This amount of compensation will carry interest @ 8% p.a., as awarded by the Tribunal, till its realization. Rest of conditions of impugned award shall remain intact.
21. In the result, the appeal is allowed in part and the impugned award stands modified to the extent is indicated herein-above.

Sd /-

(Parth Prateem Sahu)

Judge