

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 158 of 2014

- Aswani Kumar Vaisnav S/o Bhagwan Das Vaisnav Aged About 40 Years R/o Village Chapora Malkharoda, P.S. Janjgir Champa, Civil and Revenue Distt. Janjgir-Champa C.G., At present R/o Mundapar, Korba, Distt. Korba C.G.

---- Appellant/claimant

Versus

1. Pratap Das Joshi S/o Bhagatram Joshi R/o Shankerpara, Supela, Bhilai, P.S. Supela, Civil & Revenue Distt. Durg C.G.
2. Branch Manager The New India Insurance Co. Ltd., Korba, The New India Insurance Co. Ltd., Bhilai, Distt. Durg C.G.

---- Respondents

MAC No. 159 of 2014

1. Smt. Kamla Bai W/o Late Lamboder Das Vaisnav Aged About 52 Years
2. Kishan Das Vaisnav S/o Late Lamboder Das Vaisnav Aged About 34 Years

Both R/o At Present Mundapar, P.S. Korba, Civil & Revenue Distt. Korba C.G.

---- Appellants/claimants

Versus

1. Pratap Das Joshi S/o Bhagatram Joshi R/o Shankerpara, Supela, Bhilai, P.S. Supela, Civil & Revenue Distt. Durg C.G.
2. Branch Manager The New India Insurance Co. Ltd., Korba, The New India Insurance Co. Ltd., Bhilai, Distt. Durg C.G.

---- Respondents

MAC No. 160 of 2014

1. Smt. Shyama Bai Wd/o Late Janki Ram Tiwari @ Janak Das Aged About 30 Years
2. Tilesh Kumar S/o Late Janki Ram Tiwari @ Janak Das Aged About 1 Year. Being Minor through his mother (Natural Guardian) appellant No.1 Smt. Shyama Bai.

Both R/o at present Mundapar, P.S. Korba, Civil & Revenue Distt. Korba (CG)

---- Appellants/claimants

Versus

1. Pratap Das Joshi S/o Bhagatram Joshi R/o Shankerpara, Supela, Bhilai, P.S. Supela, Civil & Revenue Distt. Durg C.G.
2. Branch Manager The New India Insurance Co. Ltd., Korba, The New India Insurance Co. Ltd., Bhilai, Distt. Durg C.G.

---- Respondent

MAC No. 161 of 2014

1. Smt. Santra Bai Wd/o Late Puran Das Vaisnav Aged About 45 Years
2. Narendra Kumar S/o Late Puran Das, Aged About 13 Years Being Minor through his natural guardian mother appellant No. 1 Smt. Santra Bai,

Both R/o Gajra Basti, Bhankimogra, at present R/o Mundapara, P.S. Korba, Civil & Revenue Distt. Korba (CG)

---- Appellants/claimants

Versus

1. Pratap Das Joshi S/o Bhagatram Joshi R/o Shankerpara, Supela, Bhilai, P.S. Supela, Civil & Revenue Distt. Durg C.G.
2. Branch Manager The New India Insurance Co. Ltd., Korba, The New India Insurance Co. Ltd., Bhilai, Distt. Durg C.G.

---- Respondents

MAC No. 163 of 2014

1. Smt. Maya Bai Wd/o Late Milap Das Vaisnav Aged About 60 Years
2. Makhan Das Vaisnav S/o Late Milap Das Vaisnav Aged About 39 Years

Both R/o At Present Mundapar, P.S. Korba, Civil and Revenue Distt. Korba C.G.

---- Appellants/claimants

Versus

1. Pratap Das Joshi S/o Bhagatram Joshi R/o Shankerpara,

Supela, Bhilai, P.S. Supela, Civil & Revenue Distt. Durg C.G.

2. Branch Manager The New India Insurance Co. Ltd., Korba, The New India Insurance Co. Ltd., Bhilai, Distt. Durg C.G.

---- Respondents

For Appellants	:	Shri Punit Ruparel with Shri Kalpesh Ruparel, Advocate.
For Respondent No.1	:	None though served.
For Respondent No.2	:	Shri K.N. Nande, Advocate on behalf of Shri Mahavir Bhatnagar, Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

11/04/2019

As all these five appeals filed by the claimants including injured claimant under Section 173 of the Motor Vehicles Act, 1988 arise out of the common award dated 20.12.2013 passed by Additional Motor Accident Claims Tribunal (FTC), Korba, they are being disposed of by this common judgment.

02. As per averments in the claim petitions, on 21.5.2010 Lambodar Das Vaishnav, Milapdas Vaishnav, Janki Ram Tiwari, Poorandas Vaishnav and Ashwani Kumar Vaishnav along with some other persons were travelling in vehicle Bolero bearing No.CG 12D 0899 as passengers. However, at around 2.15 pm near Village-Dullapur, Main Road, non-applicant No.1 Pratap Das Joshi by driving the vehicle truck bearing No.CG 07C 1861, which was also owned by him and insured with non-applicant No.2/New India Insurance Co. Ltd, in a rash and negligent manner dashed the said Bolero. As a result of this accident, Lambodar Das Vaishnav, Milapdas Vaishnav, Janki Ram Tiwari and Poorandas Vaishnav succumbed to the injuries sustained in the said accident whereas Ashwani Kumar Vaishnav suffered grievous injuries.

03. On separate claim petitions being filed by the claimants under Section 166 of the Motor Vehicles Act i.e. Claim Case No.95/13 by injured claimant Aswani Kumar Vaishnav (MAC No.158/14), Claim

Case No.94/13 for death of Lambodar Das Vaishnav (MAC No.159/14); Claim Case No.96/13 for death of Jankiram Tiwari (MAC No.160/14); Claim Case No.98/13 for death of Purandas Vaishnav (MAC No.161/14) and Claim Case No.93/13 for death of Milap Das Vaishnav (MAC No.163/14), the Tribunal considering the evidence led by the parties by the common award dated 20.12.2013 awarded compensation of Rs.1,34,500/-, 1,55,000/-; 1,28,500/-, 1,26,000/- & 71,500/- with interest @ 7% per annum from the date of claim petitions till realization, in favour of the respective claimants after deducting 50% from the total compensation towards contributory negligence on the part of driver of Bolero vehicle, fastening liability on non-applicant No.2/insurance company jointly and severally along with non-applicant No.1/driver & owner of the offending vehicle truck.

04. Learned counsel for the appellants/claimants submits that though he has raised various grounds in the memo of appeal, however, he is not pressing all those grounds and is confining his argument only to the extent that the Tribunal was not justified in deducting 50% from the amount of compensation assessed by it towards contributory negligence on the part of driver of Bolero in which the deceased persons and the injured claimant were travelling and further, that the amount awarded under the conventional heads in death cases being very much on the lower side needs to be enhanced as per decision of the Hon'ble Supreme Court in ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680.***

05. On the other hand, learned counsel for the respondent/insurance company supports the impugned award and submits that the Tribunal considering all the relevant aspects of the matter has rightly awarded compensation after deducting 50% towards contributory negligence on the part of driver of Bolero vehicle, which needs no interference by this Court.

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

07. It is not disputed by the parties that all the deceased persons

and the injured claimant were travelling in Bolero vehicle as passengers. As per Ex.P/3 FIR, offence was registered against the driver of truck bearing No. CG 07C 1861 i.e. non-applicant No.1 Pratap Das Joshi and after completion of investigation, final enquiry report was filed by the police vide Ex.P/16 against non-applicant No.1 wherein it has been mentioned that non-applicant No.1 by driving rashly and negligently dashed the Bolero vehicle, in which the deceased persons and injured claimant were sitting, from opposite direction. From the overall evidence on record, it is found that present is a case of composite negligence. However, driver, owner and insurance company of Bolero have not been made party in either of the claim petitions.

08. In the matter of ***T.O. Antony Vs. Karvarnan and others, 2008 AIR SCW 2045***, the Hon'ble Supreme Court while explaining the concept of composite negligence and contributory negligence, observed 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.

09. Considering the facts and circumstances of the case, the manner in which the accident occurred, the fact that the deceased persons and the injured claimant were travelling as passengers in one of the vehicles Bolero, there was head-on collision between said Bolero and the truck, which was being driven by non-applicant No.1, it is a case of composite negligence of non-applicant No. 1 & driver of another vehicle Bolero. The deceased persons or the injured claimant, by no stretch of imagination, can be said to be negligent in any manner which contributed to the accident. Therefore, the Tribunal was not justified in granting only 50% from the amount of compensation assessed in respective claim cases by it on the ground of there being contributory negligence on the part of the driver of Bolero vehicle and that driver, owner or insurance company of Bolero vehicle have not been made party in the claim petitions.

10. The co-ordinate Bench of this Court in MAC No.162/2014 filed by injured claimant Manharan Prasad Vaisnav, which arises out of the same accident, in view of decision of Hon'ble Supreme Court in *T.O. Antony* (supra), vide judgment dated 2.11.2018 set aside the finding of the Tribunal with regard to 50% deduction from the compensation towards contributory negligence.

11. Thus, keeping in view the decision of the Hon'ble Supreme Court in *T.O. Antony* (supra) and the decision of this Court in MAC No.162/2014 (supra), the finding recorded by the Tribunal deducting 50% from the compensation assessed by its in respective claim cases on the ground of there being contributory negligence on the part of driver of Bolero vehicle and non-impleadment of driver, owner and insurer of Bolero vehicle, is liable to be set aside and is hereby set aside.

12. As regards the other limb of argument of counsel for the appellants that the amount awarded under the conventional heads in

death cases is on the lower side and needs to be enhanced as per decision in *Pranay Sethi* (supra) of the Hon'ble Supreme Court, considering the fact that in death cases the claimants are widow and son of the deceased persons, the amount awarded by the Tribunal under the conventional heads is no doubt on the lower side and deserves to be enhanced to Rs.70,000/- towards loss of spousal consortium (Rs. 40,000/-), loss of estate (Rs.15,000/-) and for funeral expenses (Rs.15,000/-).

13. In the result, the appeals are allowed and the finding of the Tribunal deducting 50% from the total compensation assessed by it towards contributory negligence on the part of driver of vehicle Bolero is hereby set aside.

The claimants herein in death cases (Claim Cases No.94/13, 96/13, 98/13 & 93/13) are entitled for the total loss of dependency assessed by the Tribunal plus amount of Rs.70,000/- under conventional heads with interest as awarded by the Tribunal. The injured claimant in Claim Case No.95/13 shall be entitled for the entire amount of compensation of Rs.2,68,200/- as assessed by the Tribunal with interest as awarded by it. However, rest of the conditions of the impugned award shall remain intact.

Sd/

(Gautam Chourdiya)

Judge