

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 1086 of 2013**

1. Komal Prasad Shukla, S/o Devi Prasad Shukla Aged About 53 Years
2. Smt. Suman Shukla W/o Komal Prasad Shukla Aged About 48 Years
3. Kumari Pooja D/o Komal Prasad Shukla Aged About 22 Years

All residents of Qtr. No.31/3F, Resali Sector, Bhilai, Tahsil Durg,
Civil & Revenue District Durg (C.G.),

---- Appellants**Versus**

1. Raj Nath Yadav, S/o Manka Yadav R/o Stationpara, Dhamtari,
Through Mahavir Dhan Kutti Centre, Proprietor Ishwar Golcha,
S/o L.K. Golcha, Mill Para, Durg (CG) Driver.
2. Mahavir Dhan Kutti Centre Propretory- Ishwar Golcha, S/o L.K.
Golcha, Mill Para, Durg C.G., at present resident of Near Tilak
School, Water Tanki, Shikshak Nagar, Durg (CG) Owner
3. The Oriental Insurance Company Limited, Through its Manager,
Rajendra Park Chowk, Durg, Tah. & District : Durg (CG) Insurer

---- Respondents

For Appellants	:	Shri Shobhit Koshta, Advocate
For Respondent No.3	:	Smt. Chitra Shrivastava, Advocate.

Order On Board By Hon. Shri Justice Parth Prateem Sahu**18/06/2019**

1. Appellants-claimants have filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (henceforth 'the Act of 1988') challenging award dated 22.8.2013 passed by learned 1st Additional Motor Accident Claims Tribunal, Durg (for short 'the Claims Tribunal') in Claim Case No.104/12 whereby the Claims Tribunal allowed claim application in part and awarded total compensation of Rs.1,67,000/- along with interest at the rate of

6% p.a. after deducting 50% of the amount of compensation towards contributory negligence.

2. Brief facts relevant for disposal of this appeal are that on 20.8.2012 Ashok Kumar Sahu, Ajay Mishra & Sumit Shukla were going towards Anjora on motorcycle bearing registration No.CG04-DC-8276. Sumit Shukla was driving motorcycle and Ashok Sahu & Ajay Mishra were travelling as pillion riders. When they reached near Khaprinala at Bypass Road, one Matador bearing registration No.CG07/C/3984 (for short 'offending vehicle'), driven by non-applicant No.1/respondent No.1, dashed motorcycle as a result of which all of them sustained grievous injuries. Sumit Shukla succumbed to injuries suffered by him. Claimants, who are parents and sister of deceased Sumit Shukla, filed claim application before competent Claims Tribunal claiming compensation of Rs.21,11,000/- on account of death of deceased Sumit Shukla. It was pleaded by claimants in claim application that on the date of accident deceased was working as Supervisor and earning Rs.8,000/- per month.
3. Non-applicant No.1 & 2-driver & owner of offending vehicle filed their reply to claim application and denied all adverse pleadings made therein. They have pleaded that on the date of accident driver of offending vehicle was possessing valid and effective driving license. Offending vehicle was insured with non-applicant No.3, therefore, the insurance company is liable to indemnify the owner in case any compensation is awarded by the Claims Tribunal.
4. Non-applicant No.3 Insurance Company also filed its reply and denied pleadings of claim application. It was pleaded by non-applicant No.3 that accident took place due to head-on collusion between two vehicles and therefore driver of motorcycle is also responsible for accident to the extent of 50%. It was also pleaded that since three persons were travelling in motorcycle, it also amounts to negligence on the part of driver of motorcycle

i.e. deceased Sumit Shukla. Insurance Company has also taken a defence that on the date of accident driver of offending vehicle was not having valid and effective driving license.

5. The Claims Tribunal after appreciating pleadings and evidence placed on record (oral & documentary both) by respective parties arrived at a finding that as there was head-on collusion between motorcycle & offending vehicle, therefore, driver of motorcycle was contributory negligent to the extent of 50% and awarded a sum of Rs.1,67,000/- after deducting 50% towards contributory negligence of deceased, with interest at the rate of 6% p.a. from the date of applicant till its realization.
6. Learned counsel for claimants/appellants submits that the Claims Tribunal erred in deducting 50% compensation i.e. Rs.1,67,000/-, towards contributory negligence of deceased because the insurance company failed to prove plea of contributory negligence on the part of deceased by adducing cogent and reliable piece of evidence. He further submits that the Claims Tribunal further erred in not taking income of deceased as Rs.8,000/-, which was proved by claimants by producing income certificate issued by employer of deceased. The Claims Tribunal has also not awarded any amount towards future prospects and the amount awarded under other conventional heads is also on lower side.
7. On the other hand, learned counsel for respondent No.3 Insurance Company submits that the Claims Tribunal on the basis of documents available on record i.e. copy of FIR and other documents of criminal case, has rightly held that there was head-on collusion between two vehicles and that driver of motorcycle i.e. deceased, was contributory negligent to the extent of 50%. She further submits that as the claimants failed to produce any cogent and reliable piece of evidence in support of income of deceased, therefore, the income of deceased as assessed by Claims Tribunal cannot be faulted with. The Claims

Tribunal after considering overall facts, circumstances and evidence available on record, has rightly assessed compensation and the same does not call for any interference.

8. I have heard learned counsel for the parties and perused the record.
9. Perusal of impugned award would show that the Claims Tribunal considering that there was head-on collusion between two vehicle has arrived at a finding that there was contributory negligence to the extent of 50% on the part of driver of motorcycle i.e. deceased. Apart from this fact, there is no material to show that there was any sort of negligence on the part of driver of motorcycle. Contributory negligence is a fact which is required to be proved by the party asserting it by adducing specific evidence. The Hon'ble Supreme Court in the matter of Pramodkumar Rasikbhai Jhaveri v. Karmasey Kunvargi Tak & ors reported in (2002) 6 SCC 455 while dealing with issue of contributory negligence has held thus:-

“8. We do not think that these two reasons given by the High Court fully justify the accepted principles of contributory negligence. The question of contributory negligence arises when there has been some act or omission on the claimant's part, which has materially contributed to the damage caused, and is of such a nature that it may properly be described as 'negligence.' Negligence ordinarily means breach of a legal duty to care, but when used in the expression "contributory negligence" it does not mean breach of any duty. It only means the failure by a person to use reasonable care for the safety of either himself or his property, so that he becomes blameworthy in part as an "author of his own wrong."

9. Subject to non-requirement of the existence of duty,

the question of contributory negligence is to be decided on the same principle on which the question of defendant's negligence is decided. The standard of reasonable man is as relevant in the case of plaintiff's contributory negligence as in the case of defendant's negligence. But the degree of want of care which will constitute contributory negligence, varies with the circumstances and the factual situation of the case. The following observation of the High Court of Australia in *Astley Vs. Austrust Ltd.* (1999) 73 ALJR 403 is worthy of quoting:

"A finding of contributory negligence turns on a factual investigation whether the plaintiff contributed to his or her own loss by failing to take reasonable care of his or her person or property. What is reasonable care depends on the circumstances of the case. In many cases, it may be proper for a plaintiff to rely on the defendant to perform its duty. But there is no absolute rule. The duties and responsibilities of the defendant are a variable factor in determining whether contributory negligence exists and, if so, to what degree. In some cases, the nature of the duty owed may exculpate the plaintiff from a claim of contributory negligence; in other cases, the nature of the duty may reduce the plaintiff's share of responsibility for the damage suffered; and in yet other cases the nature of the duty may not prevent a finding that the plaintiff failed to take reasonable care for the safety of his or her person or property. Contributory negligence focuses on the conduct of the plaintiff. The duty owed by the defendant, although relevant, is one only of many factors that must be weighed in determining whether the plaintiff has so conducted itself that it failed to take reasonable care for the safety of its person or property."

10. In a recent decision of *Minu Rout & anr v. Satya Pradyumna Mohapatra & ors* reported in 2013 AIR SCW 5375, the Hon'ble Supreme Court setting aside finding of contributory negligence has held thus:-

“12.....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](#) of 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 Susil 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-Exh.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 no.1. For the aforesaid reasons, the findings and reasons recorded by the Tribunal on the contentious issue No.1 holding that there is contributory negligence on the part of the deceased driver in the absence of legal evidence adduced by the Insurance Company to prove the plea taken by it that accident did not take place on account of rash and negligent driving of the truck driver is erroneous in law.”

11. In another judgment in the matter of Jiju Kuruvila vs. Kunjuamma Mohan reported in (2013) 9 SCC 166 the Hon'ble

Supreme Court 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 number of factors like 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 caused, but in absence of any direct or corroborative evidence, no conclusion can be drawn as to whether there was negligence on the 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. “

12. In the above decisions it has been held by Hon'ble Supreme Court in categorical terms that contributory negligence focuses on the conduct of plaintiff. There may be several factors to be considered for weighing conduct of plaintiff that he failed to take reasonable care for safety of its person or property. It has also been observed by Hon'ble Supreme Court that mere head-on collision between two vehicles or position of vehicle itself will not be taken to be a proof of contributory negligence on the part of driver of one of the offending vehicles and it is to be proved by adducing legal evidence by the party asserting it.
13. Keeping in mind the aforesaid principles, if facts of present case are considered, it is apparent that reasons assigned by Claims Tribunal for holding deceased driver of motorcycle to be contributory negligent to the extent of 50% is only that there was head on collision between two vehicles and at the time of accident three persons were travelling in a two wheeler.

Insurance Company had though raised plea of contributory negligence but failed to examine any witness in support thereof. Even if three persons were travelling on motorcycle as against total seating capacity of two, then also the same does not bring the conduct of deceased within the ambit of contributory negligence. It may be an offence but the same will not lead to an automatic inference that the person concerned was guilty of contributory negligence or that he contributed to the cause of accident. Thus, in absence of any legal evidence showing conduct of driver of motorcycle to be negligent in any manner, finding of recorded by Claims Tribunal that deceased Sumit Shukla was contributory negligent to the extent of 50% is liable to be set aside.

14. Now coming to next ground raised by learned counsel for appellant that the Claims Tribunal erred in awarding meagre amount of compensation by assessing income of deceased on lower side. Appellants have submitted income certificate said to have been issued by employer of deceased in which it has been mentioned that deceased was getting salary of Rs.8,000/- per month. However, claimants/appellants failed to prove this income certificate by examining its author i.e. Rajesh Tamrakar, and therefore this document (Ex.P-14) cannot be treated as admissible piece of evidence to determine income of deceased. However, looking to the facts of case at hand, nature of work as pleaded and stated by claimants before Claims Tribunal and also considering wage rate prevailing in State of Chhattisgarh at the relevant point of time, income of deceased cannot be said to be less than Rs.150/- per day. Thus, I am of the view that income of deceased can be fixed at Rs.150/- per day i.e. Rs.4,500/- per month instead of Rs.3,000/- per month as assessed by the Claims Tribunal.
15. Further, the Claims Tribunal has not granted any compensation under the head of 'future prospects'. The Hon'ble Supreme Court

in catena of its decisions including in **National Insurance Company Ltd. vs. Pranay Sethi** reported in **(2017) 16 SCC 680** has held that in case the deceased, victim of motor accident, is was below the age of 40 years and self-employed, an addition of 40% of actual income of deceased towards future prospects should be made. Relevant paragraph of Pranay Sethi's case (supra) reads thus;-

“59.4. In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.”

In the present case, as the deceased was 24 years old and was self-employed man, therefore, claimants are entitled for an addition of 40% of the assessed income of deceased.

16. For the foregoing discussions, this Court proposes to recalculate amount of compensation payable to claimants/ appellants.
17. Accordingly, income of deceased is taken as Rs.4,500/- per month and since at the time of accident the deceased was below the age of 40 years old i.e. 24 years old, and was self-employed, therefore, in view of law laid down in the matter of **Pranay Sethi's case** (supra), the income of deceased is required to be increased by 40% towards future prospects, which comes to Rs.6,300/-(1800+4500). Thus, annual income of deceased for the purpose of calculating compensation comes to Rs.75,600/- (6300x12). As the deceased was bachelor on the date of accident, therefore, 50% is to be deducted from his annual income towards his personal and living expenses and after

deducting 50%, annual loss of dependency would come to Rs.37,800/- (50% of 75600). By applying multiplier of 18, as applied by Claims Tribunal, to annual loss of dependency, total loss of dependency would come to Rs.6,80,400/- (37800x18). Besides this, claimants/ appellants are also entitled for a lump sum amount of Rs.30,000/- under other conventional heads. Thus, claimants/appellants are now entitled to a total compensation of Rs.7,10,400/- (6,80,000+30,000) instead of Rs.3,34,000/- as awarded by Claims Tribunal, recoverable from the respondents jointly and severally. This amount of compensation shall carry interest @ 6% p.a. from the date of filing of claim application till its realization. Rest of conditions mentioned in the impugned award shall remain intact.

18. Any amount already paid to claimants/appellants as compensation shall be adjusted from the total amount of compensation as calculated above.
19. The appeal is accordingly allowed in part. The award impugned stands modified to the extent indicated above.

Sd/-
(Part Prateem Sahu)
Judge

roshan/-