

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 796 of 2014

- Mo. Wasim S/o Mo. Fahim Aged About 23 Years Through- His Natural Guardian- Mo. Fahim, S/o Abdul Jalil, R/o Sanjay Nagar, P.S. Tikrapara, Raipur, Chhattisgarh

---- Appellant

Versus

1. Sheikh Kabir Qureshi, S/o Sheikh Usman Qureshi R/o Bairan Bazar, Favvara Chowk, Besides Saqub Paan Palace, P.C. City Kotwali, Tah. And Distt. Raipur Chhattisgarh (Driver of vehicle No.CG04DL-5103)
2. H. Shafi S/o Late S. Rafiq R/o Bairan Bazar, Favvara Chowk, Besides Saqub Paan Palace, P.S. City Kotwali, Tah. And District : Raipur, Chhattisgarh (Owner of vehicle No.CG04DL-5103)
3. United India Insu.Co.Ltd. S/o Thru- Divisional Manager, Kachery Chowk, Jail Road, District : Raipur, Chhattisgarh (Insurer of vehicle No.CG04DL-5103)

---- Respondents

MAC No. 515 of 2014

- United India Insurance Company Ltd. Thru- Its Divisional Manager, Divisional Office- Raipur, Kutchery Chowk, Raipur, P.O. Raipur, P.S. Moudhapara, Tah. And Distt. Raipur, Chhattisgarh (Insurer of Motorcycle No.CG04DL-5103)

---- Appellant (NA3)

Versus

1. Mohd.Vasim, S/o Mohd. Fayeem Aged About 23 Years Thru- Legal Representative- Father Mohd. Fayeem, S/o Abdul Zalil, R/o Sanjay Nagar, Raipur, P.S. Tikrapara, Distt. Raipur, Chhattisgarh (Applicant)
2. Sheikh Kabeer Kuraishi S/o Sheikh Usman Kuraishi R/o Bairan Bazar, Fauvara Chowk, Beside Sakun Pan Palace, Raipur, P.S. City Kotwali, Tah. And District : Raipur, Chhattisgarh (Driver of Motorcycle No.CG04DL-5103) (NA1)
3. H. Shafi S/o Late S. Rafik R/o Near Sakub Pan Palace, Bairan Bazar, Raipur, P.S. City Kotwali, Tah. And District : Raipur, Chhattisgarh (Register Owner of Motorcycle No.CG04DL-5103) (NA2)

----Respondents

For Appellant /Claimant	: Shri Galib Dwivedi, Advocate on behalf of Shri Amiyakant Tiwari, Advocate
For Respondents-1 and 2/Driver and Owner of offending vehicle	: Shri Suresh Tandon, Advocate
For Respondent-3/Insurance Company	: Shri Dashrath Gupta, Advocate

Hon'ble Shri PR Ramachandra Menon, Chief Justice &
Hon'ble Shri Justice Parth Prateem Sahu
Order on Board

Per Parth Prateem Sahu, J.
20.11.2020

1. Both these appeals are arising out of the same award dated 28.02.2014 passed by the 4th Additional Motor Accident Claims Tribunal, Raipur (for short, 'Claims Tribunal') in Claim Case-13 of 2011, whereby learned Claims Tribunal allowed application under Section 166 of the Motor Vehicles Act, 1988 in part and awarded Rs.2,09,125/- as total compensation in an injury case.

2. Facts relevant for disposal of this appeal are that on 25.11.2009 in between 11-11.30 am, NA1 while driving his Motorcycle bearing No.CG04DL-5103 (hereafter, referred to as offending vehicle) rashly and negligently, dashed another Motorcycle bearing No.CG04CY-6626, driven by Md Vasim and caused accident. In the said accident Md Vasim suffered grievous injuries on his head along with other parts of the body. He was initially taken to Heritage Hospital from where, he was shifted to Balaji Hospital, Raipur. Accident was reported to concerned Police Station, based upon which Crime bearing No.41 of 2010 was registered against NA1.

3. After taking treatment from hospital, Claimant/injured filed an application under Section 166 of the Act of 1988 through his legal representative, father, seeking compensation of Rs.25,96,000/- on different heads, pleading therein that on account of motor accidental injuries

suffered by him, he went in coma, his brain was operated, he become permanently disabled and treatment is still going on.

4. Respondents-1 and 2, who are driver and owner of offending vehicle submitted reply to the claim application. They have denied the fact that NA1 was driving the offending vehicle rashly and negligently. Offending vehicle was insured with NA3, Insurance Company, liability if any, for payment of compensation would be upon NA3. The amount of compensation claimed is highly exaggerated.

5. NA3/Insurance Company submitted its reply pleading therein that the facts of accident as pleaded in the application are concocted and fabricated. The insurance of offending vehicle was admitted but it was pleaded that at the time of accident driver of the vehicle was not possessed with valid and effective driving license. FIR lodged against the accident is highly belated. Claimant/injured was not possessed with valid and effective driving license, hence, claim application is not maintainable against NA3/Insurance Company of the offending vehicle. In alternate, it was also pleaded that if the Claims Tribunal comes to conclusion that there is involvement of offending vehicle in the accident, then, it is to be treated as contributory negligence of drivers of both vehicles. There was breach of policy conditions hence, Insurance Company is not liable to satisfy any amount of compensation.

6. On appreciation of pleadings and evidence brought on record by respective parties, learned Claims Tribunal initially dismissed claim

application holding that the claimant failed to prove his case vide award dated 11.04.2011.

7. The award passed by Tribunal dismissing claim application was put to challenge by filing MAC-855 of 2011. Upon hearing the appeal, coordinate Bench of this Court allowed the appeal in part while referring the matters of **Raj Kumar Vs Ajay Kumar and another** reported in 2011 (1) SCC 343 and **Ravi Vs Badrinarayan and others** reported in (2011) 4 SCC 693, and remitted back the case to the Claims Tribunal for deciding it afresh. It was further directed to provide opportunity to the parties to amend their pleadings, to adduce further evidence and to file and verify the documents already on record and thereafter to decide the case in accordance with law afresh.

8. Learned judges have very clearly observed that delay in filing FIR cannot be a ground to doubt the claimant/victim after considering different aspects of the case. After receiving the case back, learned Claims Tribunal initiated the proceedings. Claimant has examined Dr Rajesh Patel in their support, non-applicants have submitted that they do not want to adduce any further evidence. The Tribunal upon considering the facts and evidence placed on record by the respective parties, arrived at a finding that NA1 while driving offending vehicle rashly and negligently, dashed motorcycle of the claimant and caused accident, there was contributory negligence on the part of drivers of both the vehicles, breach of policy conditions was not found to be proved, and calculated compensation of Rs.4,18,250/-. After deducting 50% towards contributory negligence, awarded Rs.2,09,125/- as compensation.

9. Shri Dashrath Gupta, learned counsel for the Insurance Company submits that the Tribunal erred in arriving at a finding that offending vehicle insured by the claimant is involved in the accident overlooking to the fact that initially it was stated by the claimant that his motorcycle dashed with Auto-rickshaw. Subsequently, offending vehicle is involved in the accident falsely, only to seek compensation from the Insurance Company. He further pointed out that initially Tribunal on the same material, had arrived at a finding that claimant failed to prove his case and dismissed the claim application. Referring to evidence of AW5 Dr Kishore Jha, he submits that the doctor from whom the injured claimant immediately took treatment has been informed that the claimant suffered injuries on account of motor accident with Auto-rickshaw. Involvement of offending vehicle is after thought on the basis of concocted story. In alternate, he also raised a ground that amount of compensation is just and proper, which does not call for interference.

10. Shri Galib Dwivedi, learned counsel for the claimant/injured submits that the claimant has also preferred separate appeal MAC-796 of 2014 seeking enhancement of compensation on the ground that the Tribunal has not awarded any amount towards permanent disability; loss of amenities and joy in life, loss of income during the treatment, future treatment and very meagre amount has been awarded on non-pecuniary damages. He argued that the claimant suffered severe head injury, underwent operation and thereafter, became permanently disabled, hence, the claimant was represented through his father before the Tribunal. It is further contended that Claims Tribunal while dismissing claim application in earlier round, has

considered delay in lodging FIR and evidence of doctor but in the appeal (MAC-855 of 2011) filed before this Court, it was clearly observed that delay in lodging FIR in itself will not be a ground to deny justice to the victim. He submits that only because the injured became permanently disabled, he was represented through his legal representative, father, which itself is sufficient to prove that the injured claimant suffered permanent disability.

11. In support of his submissions with regard to the award of compensation on lower side, learned counsel places reliance in cases of **Rajkumar Vs Ajay Kumar** (supra) and **R.D. Hattangadi vs M/s Pest Control (India) Pvt. Ltd. and others** reported in AIR 1995 SC 755.

12. We have heard learned counsel for the respective parties and perused record of the claim case.

13. Claimant has placed on record copy of Ex.P1 charge-sheet, Ex.P2 FIR, Ex.P3 application for medical examination of claimant and other relevant documents with regard to treatment, purchase of medicines, etc. Claimant examined AW1 Dr Kamalkant Bhoi, AW2 Md Abdul Fahim, father of the Claimant, AW3 Abdul Khalik Ahmed (eyewitness), AW4 Mohd.Sayeed (medical shop-keeper), AW5 Dr Kishore Jha of Heritage Hospital, Raipur, and AW6 Dr Rajesh Patel of Patel Nursing Home in support of his case.

14. So far as the ground raised by the appellant/Insurance Company in MAC-515 of 2014 with regard to the false involvement of offending vehicle, perusal of the record would show that the Insurance Company has not

initiated any proceeding against the complainant or owner and driver of offending vehicle by way of filing any proceeding before higher Police authority or Court of law.

15. Further, evidence of AW5 Dr Kishore Jha, which is heavily relied upon by the Insurance Company in support of its submissions that other vehicle is involved in the accident and not the offending vehicle. Upon going through evidence of AW5, it would show that he is not an eyewitness. Injured claimant was taken to hospital and as per his evidence, injured while going on motorcycle, dashed by Auto-rickshaw and suffered injuries. The said witness had not stated the name of person who intimated this fact to him. That person is not known to him. AW5 is not an eyewitness, he is a hearsay witness. His statement cannot be accepted as 'Gospel Truth', when he did not name that person who gave information regarding accident as mentioned in the claim application. Insurance Company has not brought any specific evidence to prove the manner of accident. It is for the party to prove the fact asserted.

16. For the foregoing reasons, we are of the considered view that learned Claims Tribunal has correctly arrived at a finding that the claimant/injured suffered motor accidental injuries on account of rash and negligent driving of offending vehicle by NA1, driver of offending vehicle.

17. The issue with regard to delay has already been considered by Coordinate Bench of this Court in earlier round of litigation and in very specific terms, it is stated that delay in lodging FIR cannot be a ground to doubt the claimant's case.

18. Apart from the above, Insurance Company even after remand of the case has not examined any witness nor placed on record any document to show non involvement of offending vehicle or drawn any proceeding against the claimant or owner of offending vehicle with regard to false implication of offending vehicle in the accident.

19. For the foregoing reasons, submissions made by learned counsel for the Insurance Company that offending vehicle has been falsely implicated in the case is not sustainable and it is hereby repelled. No other ground is raised in the appeal filed by the Insurance Company. Consequently, appeal filed by the Insurance Company is dismissed.

20. So far as the appeal MAC-796 of 2014 filed by the injured claimant seeking enhancement of the amount of compensation, upon perusal of impugned award, would show that learned Claims Tribunal has recorded a finding that the claimant suffered permanent disability on account of motor accidental injuries suffered by him. Injured was not produced before any Medical Board to assess the percentage of disability stated to be suffered by the injured claimant. Even AW1 Dr Kamalkant Bhoi, who is said to be the treating doctor of Balaji Hospital, Raipur has clearly stated that the appellant after discharge from the hospital has not consulted again with regard to the injuries, though in his evidence/statement this witness stated that there was weakness on the limbs of the claimant, lack of some memory, but further he clarified that unless and until the treatment is completed, it cannot be said that the injured suffered permanent disability. Earlier while deciding the claim application the Tribunal has recorded same finding that the claimant failed to prove his permanent disability in absence

of any medical evidence in this regard. After remand of case also, claimant has not produced any documentary evidence to show that the claimant /injured suffered permanent disability by placing disability certificate issued by the Medical Board. No doctor was examined in support of the plea of permanent disability, even when the accident is of 2009, whereas, after remand of the case by the High Court vide order dated 30.01.2012, learned Claims Tribunal decided the case impugned award dated 28.08.2014. After remand of the case, claimant is well aware of the fact that what is required to be proved for getting the amount of compensation on the head of permanent disability, but even after clear mentioning of the fact that the claimant has not examined any doctor to prove permanent disability or filed any disability certificate, the finding recorded by the Claims Tribunal cannot be said to be erroneous, more so, when father of the injured claimant is a teacher and after remand of the case, they have examined one doctor Dr Patel, AW6.

21. We do not find any infirmity in the finding recorded by learned Claims Tribunal that the claimant failed to prove that injured suffered permanent disability. At the same time, from the records it is apparent that the claimant/injured suffered grievous injuries over his head, he underwent operation, he was unconscious for few days and took treatment as inpatient from 25.12.2009 to 02.02.2010 as it is evident from the Discharge Ticket placed on record by Balaji Hospital, Raipur. Number of x-ray reports and CITI Scan reports of the appellant available on record, from the medical bills placed on record as calculated by learned Claims Tribunal for treatment to the tune of Rs.3,83,250/-, nature of injuries can be analysed.

Learned Claims Tribunal has awarded Rs.3,83,250/- towards medical treatment, Rs.25,000/- towards injuries suffered by him, Rs.5,000/- towards special diet, Rs.3,000/- towards pain and suffering and Rs.2,000/- towards attendant. The amount of compensation awarded on other heads except medical bills appears to be on lower side. Learned counsel for the appellant failed to point out as to which of the bills placed on record has not been considered by the Tribunal.

22. In view of above, we affirm the award of amount **Rs.3,83,250/-** towards medical expenses and hold the amount awarded on other heads is on lower side.

23. Looking to the nature of injuries, treatment taken and operation of the head as also the period of continuous treatment as inpatient at Balaji Hospital from 25.12.2009 to 02.02.2010, we find it appropriate to award **Rs.50,000/-** towards injuries and **Rs.25,000/-** for pains and suffering.

24. Looking to the nature of injuries, period of treatment and reports available on record, we find it appropriate to award **Rs.25,000/-** towards loss of amenities and joy in life. **Rs.8,000/-** towards attendant, and **Rs.10,000/-** for special diet and transportation expenses.

25. The appellant took treatment as inpatient from 25.12.2009 to 02.02.2010, which is about 39 days. He underwent operation of his head and therefore, he could not have resumed to his duty or job on which he was engaged immediately after the discharge and has to take rest for considerable long time. In the facts and circumstances of the case, we find it appropriate to award loss of income for a period of five months. The

accident took place in the year 2009. Claimant on the date of accident, has been shown to be aged about 23 years young able bodied boy. No admissible piece of evidence has been placed on record to prove income of the injured claimant. Hence, the income is to be fixed on notional basis. Taking into consideration age of the injured claimant, his occupation which is shown to be working in a medical shop, price index and wage structure, we find it appropriate to fix the income of appellant/injured on the date of accident as Rs.4,000/- per month. Accordingly, loss of income has been assessed as **Rs.20,000/-** (4000 x 5).

26. So far as the submission raised by learned counsel for the appellant/claimant with regard to the finding recorded by learned Claims Tribunal with regard to contributory negligence, to be erroneous, perusal of record would show that learned Claims Tribunal has recorded a finding of contributory negligence, only considering that both the vehicles which met with an accident are of same category or Class and further considered that there is no evidence to show that NA1 suffered grievous injuries and held that both the drivers are equally negligent to the accident. The finding/reasoning assigned by the Tribunal to arrive at a finding with regard to contributory negligence of injured claimant is not based on any evidence but is only on the basis of presumption. Neither NA1, driver of offending vehicle was examined as witness to prove the negligence on the part of injured claimant nor the Insurance Company has brought on record any material or evidence to prove the fact of contributory negligence pleaded.

27. It has been held by Hon'ble Supreme Court that plea of contributory negligence taken by the party to the proceeding is a fact, which is required

to be proved by placing cogent and reliable piece of evidence. Merely pleading in one line as there was head on collusion between two vehicles it cannot be presumed that both the drivers of motor vehicles involved in the accident to be equally negligent. The claimant has examined eyewitness to the accident as AW3 Khalik Ahmed, in his evidence it is categorically stated that when he was returning from Shastri bazar to his house and reached near the house of Rajkamal Singhaniya, at that relevant time, Md Vasim, injured claimant was traveling in front of his motorcycle. He was dashed with another motorcycle driven by NA1 rashly and negligently by coming on the wrong side. This witness was cross examined extensively, but his evidence with regard to the manner in which accident took place remain unshaken.

28. Hon'ble Supreme Court while considering the issue of contributory negligence in the matter of **Jiju Kuruvila and others Vs Kunjujamma Mohan and others** reported in **(2013) 9 SCC 166**, held as under:

“20.5 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 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.”

29. In another judgment rendered by Hon'ble Supreme Court in the matter of **Minu Rout and another Vs Satya Pradyumna Mohapatra and others 2013** reported in **AIR SCW 5375**, while setting aside the finding of contributory negligence, it is held as under:

“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 offenses 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 defense 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 PW.2 and PW3 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.”

30. In view of aforementioned law laid down by Hon'ble Supreme Court on the issue of contributory negligence and also considering the facts of the case, the manner in which the accident took place on account of rash and negligent driving of motorcycle by NA1 as stated by the eyewitness

AW3, finding of contributory negligence recorded by Tribunal is not sustainable and is hereby repelled.

31. Now, the appellant/claimant is entitled for a total compensation of **Rs.5,21,250/-** (383250 + 50000 + 25000 + 25000 + 8000 + 10000 + 20000) instead of Rs.2,09,125/- as awarded by the Tribunal.

32. The aforementioned amount of compensation shall carry interest @ 6% per annum from the date of filing of claim application till its realization.

33. In the result, MAC-515 of 2014 filed by the Insurance Company is dismissed and MAC-796 of 2014 filed by the injured claimant is allowed and the impugned award is modified to the extent as indicated above.

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge