

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MAC No. 754 of 2014**

1. Smt. Pratiksha, W/o Late Mulchand, aged about 22 years
2. Bhushan Kumar, S/o Late Mulchand aged about 3 years.
3. Ku. Shakshi, D/o Late Mulchand, aged about 1 years.
4. Narmada Bai W/o Jagdish, aged about 43 years,
No.2 & 3 are minor through natural guardian mother Smt. Pratiksha.
All R/o Sant Ravidas Nagar, Jarhabhatha, P.S. Civil Lines, Tahsil & District Bilaspur (CG)

---- Appellants**Versus**

1. Shatruhan Lal, S/o Bhanjan Das, aged about 27 years, R/o Sonpuri, Devri, P.S. Mungeli, Tahsil & District Mungeli C.G. (Driver of alleged vehicle motorcycle no.CG10-EK-0649)
2. Nandan Das Banjare, S/o Motadas Banjare, aged about 70 years, R/o village Sonpuri, Devri, P.S. Mungeli, Tahsil and District Mungeli (CG) (Owner of alleged vehicle motorcycle no.CG10-EK-0649)
3. The Oriental Insurance Company Limited, through Divisional Manager, Division Office, Rajeev Plaza, Infront of Bus Stand, Bilaspur, Tahsil & District : Bilaspur (CG) [Insurer of alleged vehicle motorcycle no.CG10-EK-0649]

---- Respondents

For Appellants	:	Mr. Sameer Singh, Advocate
For Respondent No.1 & 2	:	None
For Respondent No.3	:	Mr. Abhishek Sinha, Advocate.

Hon'ble Shri P. R. Ramachandra Menon, CJ
Hon'ble Shri Parth Prateem Sahu, J

Order On Board**Parth Prateem Sahu, J****29/09/2020**

1. This appeal under Section 173 of the Motor Vehicles Act, 1988
(for short 'the Act of 1988') has been preferred against the award

dated 10.4.2014 passed by the learned 6th Additional Motor Accident Claims Tribunal, Bilaspur (for short 'the Claims Tribunal') in Claim Case No.77/13 dismissing claim application filed by claimants/appellants.

2. Facts relevant for disposal of this appeal, in brief, are that as non-applicant No.2 Nandan Das fell sick, Moolchand along with non-applicant No.1 Shatruhan Das visited house of non-applicant No.2 on 20.2.2012 to see him. Non-applicant No.2 asked non-applicant No.1 to bring ayurvedic medicines for him and for that purpose he handed over key of his motorcycle bearing registration number CG10-EK-0649. When non-applicant No.1 and Moolchand were returning from village Kamthi on motorcycle, non-applicant No.1 drove the motorcycle in rash & negligent manner and caused accident near Guddu Dhaba, Madanpur by dashing motorcycle against an unknown Bolero Jeep, as a result, Moolchand fell down from motorcycle, suffered grievous injuries on his head and died on spot. Accident was reported to Police Outpost Fasterpur, Police Station Mungeli, District Mungeli (CG) based on which crime bearing No.57/12 for the offence under Sections 279, 338 & 304A of IPC was registered against unknown vehicle.
3. Claimants, who are widow, minor children & mother of deceased Moolchand, filed an application under Section 166 of the Act of 1988 before the Claims Tribunal seeking an amount of Rs.13,04,000/- as compensation specifically pleading therein that on the date of accident, deceased was 22 years old and earning a sum of Rs.6,000/- per month by performing job of a

'Electrician'.

4. Non-applicant No.1 & 2, driver & owner of offending vehicle, filed their reply to claim application and denied the entire pleadings made therein including employment and income of deceased. In additional submissions, it was pleaded that the claimants in collusion with the police authorities, falsely implicated the non-applicants No.1 & 2 and filed a false claim against them in order to get compensation. On the date of accident, the motorcycle in question was insured with non-applicant No.3 Insurance Company and non-applicant No.1 was having valid and effective driving license to drive motorcycle, therefore, in case any compensation is granted by the Claims Tribunal to claimants, the insurance company is liable to indemnify the insured.
5. Non-applicant No.3- Insurance Company also filed its reply to claim application and denied the averments made therein. It was pleaded that at the time of accident, non-applicant No.1 was not possessing valid and effective driving license to drive motorcycle. Since the motorcycle was plied on road in breach of conditions of insurance policy, the insurance company is not liable to indemnify the insured.
6. Upon appreciation of pleadings and evidence placed on record by both sides, the Claims Tribunal arrived at a conclusion that there is contradiction in the evidence of eyewitness Jai Singh (AW-2) with regard to rashness & negligence, in the examination-in-chief this witness has stated that accident took place due to negligence on part of non-applicant No.1, driver of

motorcycle, whereas in the cross-examination he has attributed negligence to driver of unknown Bolero vehicle. Consequently, the Claims Tribunal dismissed claim application filed by claimants attributing negligence on the part of non-applicant No.1, by holding that the claimants failed to prove that non-applicant No.1 was rash and negligent while driving motorcycle which resulted in accident in question leading to death of deceased.

7. Mr. Sameer Singh, learned counsel for claimants/appellants submits that mis-appreciation of pleadings and evidence of the respective parties by the Claims Tribunal has resulted into dismissal of claim application. The claimants in their application have categorically pleaded that while returning from village Kamthi, non-applicant No.1 drove motorcycle, on which deceased Moolchand was travelling as 'pillion rider', in a rash & negligent manner and caused accident by dashing against an unknown Bolero vehicle. Claimant No.1 in her evidence has categorically deposed that non-applicant No.1 drove the motorcycle rashly and negligently and met with accident with an unknown vehicle near Guddu Dhaba, Madanpur. In the cross-examination also, Claimant No.1 has stated that on the date of accident, motorcycle bearing No.CG10-EK-0649 was driven by non-applicant No.1-Shatruhan. Hence, negligence on the part of non-applicant No.1 has been specifically pleaded and stated. He further points out that FIR was lodged within two hours of accident specifically mentioning that the motorcycle on which Moolchand was travelling with non-applicant No.1 was hit by

some unknown vehicle, as a result, both of them suffered injuries and Moolchand died. In alternate, he submits that even if negligence of driver of other vehicle is taken into consideration where the accident is between two motor vehicles, then for the injured or family members of deceased, who is not driver of any of vehicles involved, it will be a case of composite negligence. He places his reliance on the decision of Hon'ble Supreme Court in the matter **T.O. Anthony Vs. Karvarnan & ors** reported in **(2008) 3 SCC 748**.

8. On the other hand, Mr. Abhishek Sinha, learned counsel representing respondent No.3- Insurance Company has submitted that negligence on the part of non-applicant No.1 has not been proved. The Claims Tribunal after appreciating the entire material and evidence available on record has arrived at a conclusion that claimants failed to prove rashness & negligence on the part of non-applicant No.1. He further submits that the claimants themselves have relied upon the documents of criminal case to prove the factum of accident, therefore, they cannot be allowed to pick & choose the documents they like to rely and to deny. In support of his submissions, learned counsel places his reliance on the judgment of Hon'ble Supreme Court in case of **Oriental Insurance Co. Ltd. vs. Premlata Shukla** reported in **2007 AIR SCW 3591**. Relying on the decision of Hon'ble Supreme Court in **Oriental Insurance Company Ltd. Vs. Meena Variyal & ors** reported in **(2007) 5 SCC 428**, he submits that the application filed by claimants was under Section 166 of the Act of 1988, therefore, unless & until the negligence is

proved, no compensation could be granted to them. He submits that there is no merit in this appeal and the same is liable to be dismissed.

9. We have heard learned counsel for the parties and perused the record of claim case.
10. In Para-7 of claim application filed under Section 166 of the Act of 1988, the claimants-appellants have specifically pleaded that non-applicant No.1 drove the motorcycle bearing No.CG10-EL-0649 rashly and negligently and met with accident with unknown Bolero Jeep, as a result, Moolchand, who was travelling on said motorcycle as pillion rider, suffered injuries and died. In support of claim case, the claimants have filed documents of criminal case registered against unknown vehicle i.e. Final report (Ex.P-1), FIR (Ex.P-2), Merg Intimation (Ex.P-3), Seizure Memos (Ex.P-4 & Ex.P-5). Perusal of contents of FIR (Ex.P-2) shows that FIR was recorded on 20.2.2012 at 11.45 p.m. (2345 hrs) in respect of accident occurred on the same day at about 10.30 p.m. (2230 hrs). It is also mentioned in FIR that Moolchand was travelling with Shatruhan on motorcycle, they met with an accident near Guddu Dhaba with some unknown vehicle and in the said accident, Shatruhan had also suffered injuries. Ex.P-1 is the final report submitted by the Police after investigation. In the description of incident of Ex.P-1, it is mentioned that deceased Moolchand was travelling with Shatruhan. Moolchand & Shatruhan went ahead of the lodger of FIR and thereafter they came to know that deceased Moolchand & Shatruhan met with accident and Moolchand died as a result of that accident.

Motorcycle bearing No.CG10-EK-0649 in damaged condition was seized from the place of accident on 21.2.2012 at 1.00 a.m. i.e. within few hours of accident.

11. From the aforementioned facts and documentary evidence available on record, it is evident that motorcycle owned by non-applicant No.2 was involved in the accident. The fact that non-applicant No.2 is the registered owner of said motorcycle and at the time of accident, the motorcycle was being driven by non-applicant No.1, has not been denied by non-applicant Nos.1 & 2 in their reply, but for the fact that FIR was lodged against unknown vehicle attributing negligence to its driver. The Claims Tribunal dismissed the claim application on the ground that the claimants failed to prove negligent driving of motorcycle by non-applicant No.1. The reason assigned for arriving at such a conclusion is that there is contradiction in the cross-examination of Jai Singh (AW-2), eyewitness of accident, with regard to negligence on the part of non-applicant No.1, where he has stated that accident took place on account of negligence on the part of unknown Bolero Jeep.
12. Status of deceased Moolchand as pillion rider has not been disputed nor the Claims Tribunal has considered it to be contrary to the pleadings and evidence available on record in this regard, but for proof of negligence on the part of non-applicant No.1. Hon'ble Supreme Court in T.O. Anthony's case (supra) has considered the issue with regard to accident between two motor vehicles and negligence to be contributory negligence or composite negligence and held thus:-

“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.....”

13. The issue of composite and contributory negligence again came up for consideration before Hon'ble Supreme Court in the case of **Khenyei vs. New India Assurance Company Limited & ors** reported in **(2015) 9 SCC 273** and it was held thus:-

“15. There is a difference between contributory and composite negligence. In the case of contributory negligence, a person who has himself contributed to the extent cannot claim compensation for the injuries sustained by him in the accident to the extent of his own negligence; whereas in the case of composite negligence, a person who has suffered has not contributed to the accident but the outcome of combination of negligence of two or more other persons. This Court in *T.O. Anthony v. Karvarnan & ors*¹⁷ has held that in case of contributory negligence, 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. It is only in the case of contributory negligence that the injured himself has contributed by his negligence in the accident. Extent of his negligence is required to be determined as damages recoverable by him in respect of the injuries have to be reduced in proportion to his contributory negligence. The relevant portion is extracted hereunder :

“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.

7. Therefore, when two vehicles are involved in an accident, and one of the drivers claims compensation from the other driver alleging negligence, and the other driver denies negligence or claims that the injured claimant himself was negligent, then it becomes necessary to consider whether the injured claimant was negligent and if so, whether he was solely or partly responsible for the accident and the extent of his responsibility, that is his contributory negligence. Therefore where the injured is himself partly liable, the principle of 'composite negligence' will not apply nor can there be an automatic inference that the negligence was 50:50 as has been assumed in this case. The Tribunal ought to have examined the extent of contributory negligence of the appellant and thereby avoided confusion between composite negligence and contributory negligence. The High Court has failed to correct the said error."

14. In case at hand, the deceased was not driver of any of the vehicles involved in accident in question, rather he was a pillion rider, therefore, in view of above pronouncements of Hon'ble Supreme Court, the claimants can claim compensation from both or any of the joint tort feasons of accident and they are not required to prove or establish negligence of any of two joint feasons.
15. For the foregoing reasons, we are of the considered view that the Claims Tribunal erred in dismissing claim application of the

claimants/appellants on the ground that they failed to prove negligence on the part of driver of motorcycle i.e. non-applicant No.1.

16. Consequently, the appeal is allowed. Impugned award is set aside. The matter is remanded back to the Claims Tribunal for considering the quantum of compensation to be awarded to the claimants/appellants herein and for considering fastening of liability of payment of compensation upon the non-applicants.
17. Looking to the date of accident, we direct the Claims Tribunal to decide the claim case within a period of five months from the date of receipt of record along with copy of the order passed by this Court. It goes without saying that the Claims Tribunal shall pass the award afresh after giving opportunity of hearing to all respective parties. The parties to the case will be at liberty to lead further evidence, if any, in support of their claim.
18. Record be sent back without any further delay.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-