

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**M. A. (C) No. 7 of 2012**

(Arising out of order dated 07.05.2011 passed in Claim Case No.30 of 2011 by the 4th Additional Motor Accident Claims Tribunal, Raipur, C.G.)

R.P. Verma, Son of late Ramlakhan Verma, aged about 59 years, R/o Bhavnanagar, Khamhardih, Raipur, Tahsil Raipur, Chhattisgarh.

---- Appellant

Versus

1. Ishwar Lal Chandrakar, Son of Krishna Kumar Chandrakar, aged about 36 years, Driver, R/o village Palod (Near Navagaon), P.S. Mandir Hasoud, District Raipur, Chhattisgarh.
2. Hardhan Dey, Son of late N.P. Dey, Business Transport, R/o Mana Basti, Mana, Raipur, District Raipur, Chhattisgarh.
3. Smt. Rekha Dwedi, wife of late K.C. Dwedi, R/o Changorabhata, behind Shitala Mandire, Raipur, Chhattisgarh.
4. The New India Insurance Co. Ltd., Madina Building, Jail Road, Raipur, District Raipur, Chhattisgarh.

---- Respondents

For Appellant	: Shri Raghvendra Pradhan, Advocate
For Respondents No.1 to 3	: None
For Respondent No.4	: Shri Raj Awasthi, Advocate

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice

Hon'ble Shri Parth Prateem Sahu, Judge

Judgment On Board

09.06.2020

1. The appellant/claimant has challenged the impugned award dated 07.05.2011 passed by the 4th Additional Motor Accident Claims Tribunal, Raipur, Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Claim Case No.30 of 2011 questioning the quantum of compensation.

2. Brief facts for disposal of this appeal, are that, on 21.12.2005 when appellant was travelling on a Jeep from Mahasamund to Raipur, it met with an accident with Mini Bus bearing registration No.CG-04/E/0199 (hereinafter referred to as 'offending bus') driven by respondent No.1 and owned by respondent No.2. In the aforementioned accident, Jeep was overturned, due to which, driver of Jeep, namely, K.C. Dwivedi suffered grievous injuries and he succumbed to those injuries. The appellant was also taken to the hospital at Raipur. He took treatment at Ram Krishna Hospital, Raipur for about 11 days.
3. The appellant filed an application under Sections 166 and 140 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') before the learned Claims Tribunal claiming compensation of Rs.31,00,000/- mentioning therein that on the date of accident, he was working as Senior Accountant at Education Office, Mahasamund. He pleaded that in the aforementioned accident, he suffered grievous injuries over his person including fracture injury over his right hand and ribs, injuries over his right side of face and on the right eye. He lost eyesight of his right eye due to injuries suffered by him in the accident. He also pleaded that he suffered permanent disability due to injuries suffered by him in the motor accident.
4. Respondent No.1, driver of the offending bus refused to accept notice and did not choose to appear before the learned Claims Tribunal and proceeded *ex parte*.

5. Respondent No.2 appeared before the learned Claims Tribunal through his Advocate, but did not submit any reply to claim application.
6. Respondent No.3, widow of Shri K.C. Dwivedi (owner driver of Jeep) submitted reply to claim application and pleaded that non-applicant No.4 was the insurer of the Jeep, driven by late Shri K.C. Dwivedi and the claim of personal accident has been satisfied by the Insurance Company. It was further pleaded that the liability, if any, to pay the amount of compensation will be on the non-applicant No.4/Insurance Company.
7. Respondent No.4/Insurance Company also submitted separate reply to the claim application and pleaded that non-applicant No.1, driver of offending bus is solely responsible for the accident, there is mentioning of different numbers of Jeep and Jeep of both numbers mentioned in the pleadings is not involved in the accident. It was further pleaded that there was no valid and effective driving license with driver of Jeep to drive the vehicle. There was no permit and risk of passengers is also not covered.
8. The learned Claims Tribunal based on the pleadings of respective parties has framed as many as eight issues for consideration and after conclusion of trial held that non-applicant No.1 while driving the offending bus rashly and negligently, dashed the Jeep; appellant who was occupant of the Jeep suffered grievous injuries in the accident; there was no contributory negligence on the part of driver of the Jeep

and there was no valid and effective driving license with non-applicant No.1 to drive the offending bus. It was further held that the appellant has not suffered any permanent disability in the motor accident and awarded a lump-sum amount of Rs.20,000/- as compensation towards injuries and pain and suffering.

9. Shri Raghvendra Pradhan, learned counsel for the appellant submits that learned Claims Tribunal failed to consider the nature of injuries suffered by the appellant, the medical prescription (Ex.P/13) issued by Dr. Harsh Vardhan Gupta (AW-4) and disability certificate (Ex.P/16) issued by Dr. Harsh Vardhan Gupta (AW-4). He further submits that Dr. Harsh Vardhan Gupta (AW-4) who is an Eye Specialist, has very categorically stated in his evidence that appellant has lost eyesight of right eye to the extent of 100% and thereby proved disability certificate (Ex.P/16). He also pointed out that learned Claims Tribunal has not awarded any amount towards permanent disability, loss of income during the period of treatment though the appellant has proved that after taking treatment as inpatient, he was advised to take bed rest for two months. He also submits that no amount under the heads of attendant, special diet, conveyance etc. have been awarded separately, but learned Claims Tribunal has awarded a lump-sum amount of Rs.20,000/- towards pain and suffering only. He also pointed out that the learned Claims Tribunal erred in holding that it was sole negligence on the part of the driver of the offending bus though there is involvement of two motor

vehicles and the appellant was occupant of one of the vehicles, and contended that in this case, there is composite negligence of driver of both the vehicles and the appellant can seek compensation against any of the two vehicles or both.

10. Per contra, Shri Raj Awasthi, learned counsel for respondent No.4/Insurance Company submits that the appellant in the claim application has pleaded that there was negligence on the part of the driver of the offending bus and also stated the same in his evidence. He pointed out in view of the pleadings and evidence of the appellant available on record, learned Claims Tribunal has rightly held that the accident was on account of rash and negligent driving of the offending bus by non-applicant No.1/respondent No.1. It is contended that appellant being a Government Servant is entitled for reimbursement of medical expenses and in his evidence, he has accepted that he has received the amount of medical expenses and the appellant has also been granted payment towards medical leave. He further submits that claim of the appellant that he suffered injury over his right eye, due to which, he lost eyesight of that eye is not correct as in the MLC report annexed with the record, it nowhere mentions about the injury on right eye. He also pointed out that the medical document annexed with the record of Ram Krishna Hospital, Raipur also do not mention that the appellant suffered any injury over his right eye and was treated. He lastly submits that the award

passed by learned Claims Tribunal in the facts and circumstances of the case is just and proper and do not call for any interference.

11. We have heard learned counsel appearing for the respective parties and also perused the record carefully.
12. So far as the submission of learned counsel for the appellant that the learned Claims Tribunal erred in holding that there is sole negligence on the part of non-applicant No.1, driver of the offending bus only is concerned, the law in this regard is now well settled by Hon'ble Supreme Court in the matter of **T. O. Anthony v. Karvarnan and others**¹, in which, Hon'ble Supreme Court has held that where the accident is between two motor vehicles then it is for the claimant to file claim application either against both the vehicles or can also choose to file his claim application against any one of the vehicles as it is a composite negligence of both for the third party. Relevant portion of the judgment reads 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 wrongdoers, it is said that the person was injured on account of the composite negligence of those wrongdoers. In such a case, each wrongdoer 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 wrongdoer separately, nor is it necessary for the court to determine the extent of liability of each wrongdoer separately. On the other

¹ (2008) 3 SCC 748

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 on 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 stand 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.”

13. In the instant case, the appellant has made driver and owner of the offending bus party to claim application, the legal representative of owner of the Jeep (as owner driver of Jeep died in same accident), as also the Insurance Company of the Jeep. Looking to the manner in which accident occurred between two vehicles and the appellant being an occupant of one of the vehicles involved in the accident, appellant is entitled to seek compensation from the respondents

jointly and severally or from any one of them. Though, respondent No.4 Insurance Company has pleaded that the risk of occupant was not covered, but has not proved the policy.

14. The other ground raised by learned counsel for the appellant with regard to enhancement of amount of compensation on account of permanent disability suffered by him due to loss of eyesight of his right eye, we have gone through the record minutely. MLC report has been annexed as Ex.P/9, in which, the injuries over right side of the face of the appellant including right forehead, skull of right side of face have been mentioned. The injury over right side of face has been shown as 2" away of eye. The appellant has not proved and marked the medical documents of Ram Krishna Hospital, Raipur though he mentioned that he took treatment as inpatient at Ram Krishna Hospital, Raipur from 22.12.2005 to 02.01.2006, but the same is available on record. The document of medical treatment showing the date of admission and date of discharge of Ram Krishna Hospital, Raipur is available at page-93 of the record of the Claims Tribunal wherein it is mentioned that the appellant has admitted to hospital on 22.12.2005 and discharged on 02.01.2006. In that document, diagnosis has been shown "Distal End of Radius (RT.) and Blunt Injury". There is no mention of the injury over the right eye.
15. The learned Claims Tribunal has recorded that initially when the claim application was filed on 27.09.2006, there is no mention of injury suffered by the appellant on his right eye, but this pleading of

injury over right eye in the accident in question causing permanent disability of loss of eyesight of right eye has been inserted by way of amendment after 2½ years of filing of claim application. This fact has not been disputed by the learned counsel for the appellant and even from perusal of claim application reveals that the pleading of injury over the right eye has been made only after lapse of more than 2½ years of filing of claim application. Even Dr. Harsh Vardhan Gupta (AW-4) who was examined to prove the injury and disability suffered by the appellant on his right eye, has stated in his evidence that, he is not able to tell about the period of injury of right eye. He also stated that when the appellant came to him for the first time on 13.01.2006, he did not find any bleeding injury.

16. Looking the above material available on record i.e. MLC report and discharge memo of Ram Krishna Hospital, Raipur wherein it has been shown that the appellant was discharged from the hospital on 02.01.2006, but in both the documents, there is no mention of injury over his right eye. Even Dr. Harsh Vardhan Gupta (AW-4) has not specifically mentioned about the period of injury suffered by the appellant, more so, when the appellant himself in his claim application has not pleaded that he suffered motor accidental injury on his right eye leading to permanent disability at the time of filing of claim application which was filed on 27.09.2006, but it was pleaded by way of amendment after lapse of more than 2½ years. We do not find any error in the finding recorded by learned Claims Tribunal that

the injury over the right eye causing permanent disability is not arising out of the motor accident.

17. So far as quantum of compensation awarded by learned Claims Tribunal as argued by the learned counsel for the appellant is concerned, the appellant in his evidence has admitted that he has deposited the medical bills for reimbursement in his Department, from where, he has received Rs.30,000-35,000/- and also admitted that he has not filed any document to show that the amount he received towards the medical reimbursement as the appellant on the date of accident was a Government Servant and was working as Senior Accountant in the Education Department and retired from there only on 31.07.2007. Therefore, in the opinion of this Court, we do not find any merit in the submission made by learned counsel for the appellant that the entire medical claim has not been reimbursed by the Department. The said submission of learned counsel for the appellant is hereby rejected.
18. The other ground raised by learned counsel for the appellant that the learned Claims Tribunal has not awarded any amount towards different heads, which is required to be awarded in an injury case is concerned, the appellant has admitted that he had subsequently received salary for the medical leave period. The learned Claims Tribunal has not awarded any amount towards attendant, special diet and conveyance expenses etc., but has only awarded a lump-sum amount of Rs.20,000/- towards injuries and pain and suffering.

Looking to the nature of injury suffered by the appellant and period of treatment as indoor patient, we find it appropriate to award a lump-sum amount of Rs.10,000/- towards attendant, special diet and conveyance expenses.

19. In view of above discussion, now the appellant will be entitled for a total sum of Rs.30,000/- as compensation (Rs.20,000/- towards injuries and pain and suffering as awarded by learned Claims Tribunal and Rs.10,000/- towards attendant, special diet and conveyance expenses). The amount of compensation will carry interest at the rate of 7.5% per annum from the date of filing of the claim application till its realization. The respondents are jointly and severally liable to satisfy the amount of compensation awarded to the appellant.
20. In the result, the appeal is allowed in part and the impugned award passed by learned Claims Tribunal is modified to the extent indicated above.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge