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HIGH COURT OF CHHATTISGARH BILASPUR**M. A. (C) No. 904 of 2013**

(Arising out of award dated 31.07.2013 passed in Motor Accident Claim Case No.47 of 2009 by the Additional Motor Accident Claims Tribunal, Khairagarh, District Rajnandgaon, Chhattisgarh)

Prabhat Kumar S/o Makhan Lal Yadav, aged about 25 years, R/o present Shyampur Chuikhadan, Tahsil and Police Station Chuikhadan, District Rajnandgaon, Chhattisgarh. (Claimant).

---- Appellant**Versus**

1. Devi Singh S/o Subhe Ram Mahar, aged about 38 years, R/o Chichka, Tahsil and Police Station Khairagarh, District Rajnandgaon Chhattisgarh. (Owner and Driver of the offending vehicle CG/08/H/7240)
2. The Oriental Insurance Company Limited, Kamthi Line, Rajnandgaon, Police Station Rajnandgaon, District Rajnandgaon, Chhattisgarh (Insurance Company of the offending vehicle CG/08/H/7240)
3. Jagannath Yadav S/o Basant Yadav, aged about 40 years, R/o village Dandera, P/S Durg, District Durg, Chhattisgarh (Owner of the Motorcycle CG/07/LK/0823)
4. Branch Manager, Iffco Tokio General Insurance Company Limited, Third Floor 345-347, Lalganga Shopmall, G.E. Road, Raipur, P/S Raipur, District Raipur, Chhattisgarh (Insurance Company of the Motorcycle CG/07/LK/0823)

---- Respondents

For Appellant	: Shri Praveen Kumar Dhurandhar, Advocate
For Respondent No.1	: None
For Respondent No.2	: Shri Deepak Gupta, Advocate
For Respondent No.3	: None
For Respondent No.4	: Shri P. R. Patankar, Advocate

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Judgment On Board

Per Parth Prateem Sahu, Judge

09.07.2020

1. Challenge in this appeal is to the award dated 31.07.2013 passed by the Additional Motor Accident Claims Tribunal, Khairagarh, District Rajnandgaon, Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Motor Accident Claim Case No.47 of 2009 whereby learned Claims Tribunal dismissed the claim application holding that the accident is on account of sole negligence of the appellant/claimant and directed that non-applicant No.2-Insurance Company will be entitled to recover the amount of Rs.25,000/- deposited by it to be paid to the appellant towards 'no fault liability'.
2. Facts of the case in nutshell, are that, on 07.05.2008 at about 3.15 pm, appellant was travelling on a motorcycle bearing registration No.CG07/LK/0823, owned by his friend-cum-relative, namely, Jagannath Yadav and going to Golbazar of Khairagarh from Civil Lines. While so, another motorcycle bearing registration No.CG08/H/7240 driven by non-applicant No.1 coming from old bus stand, dashed his motorcycle in front of Pushpak Auto Sale. In the aforementioned accident, appellant suffered injuries over his forehead, nose, lips, chin, left elbow, left knee and left foot.

The accident was reported to concerned Police Station, based on which, Crime No.135 of 2008 was registered against non-applicant No.1.

3. The appellant was taken to Primary Health Centre, Khairagarh, but looking to the grievousness of his injuries, he was discharged from hospital and thereafter, he took treatment at Gayatri Hospital, Durg till 16.05.2008. He undergone operation of thumb of his left foot, due to the injuries suffered by him, he has to take bed rest for three months.
4. The appellant/claimant thereafter filed claim application under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') before the learned Claims Tribunal claiming a sum of Rs.5,26,600/- as compensation.
5. Respondent No.1/non-applicant No.1 submitted reply to claim application and denied all the adverse pleadings made by the claimant against him. It was pleaded that motorcycle No.CG08/H/7240 driven by non-applicant No.1 was dashed by the appellant from his motorcycle No.CG07/LK/0823 driven by him and his friend Durgesh Kumar was also sitting as pillion. It was further pleaded that the accident was on account of rash and negligent driving of motorcycle by the appellant; the accident was reported by non-applicant No.1

to the concerned Police Station, based on which, crime was registered for the offence punishable under Sections 279, 337 and 338 of the IPC against the appellant/claimant and the appellant suffered only simple injuries and not any permanent disability over his person. It was also pleaded that the motorcycle owned by non-applicant No.1 was insured with non-applicant No.2/Insurance Company and he was possessing valid and effective driving license to drive the motorcycle.

6. Respondent No.2/Non-applicant No.2-Insurance Company of Motorcycle No.CG08/H/7240 driven by non-applicant No.1 submitted separate reply to claim application and denied all the adverse pleadings made in the claim application. It was pleaded that the accident was on account of head on collision between two vehicles, there was no driving license with the driver of the vehicle and there was breach of conditions of the insurance policy.
7. Respondent No.3/Non-application No.3 did not choose to appear before the learned Claims Tribunal and was proceeded *ex parte*.
8. Respondent No.4/non-applicant No.4-Insurance Company of Motorcycle No.CG07/LK/0823 driven by the appellant submitted reply to claim application and denied all the adverse pleadings made in the claim application. It was

pleaded that there was no driving license with the drivers of both the vehicles and there was breach of conditions of the insurance policy.

9. Learned Claims Tribunal based on the pleadings of respective parties, formulated as many as six issues for consideration. On appreciation of the pleadings, evidence and material placed on record by the respective parties, learned Claims Tribunal held that it was not proved that non-applicant No.1 drove his vehicle rashly and negligently and caused accident; the appellant suffered grievance injuries as well as disability to the extent of 3%; there was no contributory negligence and dismissed the claim application.
10. Shri Praveen Kumar Dhurandhar, learned counsel for the appellant/claimant submits that learned Claims Tribunal while dismissing the claim application has only considered the spot-map (Exs. P/41 and P/4) prepared by the Investigating Agency in both the cases lodged by the appellant and non-applicant No.1 against each other. He submits that spot-map itself will not be sufficient to arrive at a finding about the negligence of any person. He also argued that learned Claims Tribunal erred in considering that both the persons have lodged the First Information Report and non-applicant No.1 also suffered injuries over his person in the accident as one of the grounds to hold the appellant to

be sole negligent and dismissed the claim application, which is not sustainable. There will be a case of contributory negligence when there is head on collision between two vehicles. It is contended that learned Claims Tribunal has erred in directing for recovery of an amount of Rs.25,000/- from the appellant, which was paid to him towards 'no fault liability' under Section 140 of the M.V. Act. Learned counsel placed reliance in the matters of **Minu Rout and Another v. Satya Pradyumna Mohapatra and Others** reported in **(2013) 10 SCC 695** and **Jiju Kuruvila and others v. Kunjamma Mohan and others** reported in **(2013) 9 SCC 166**. He further placed reliance in the matter of **Indra Devi and Others v. Bagada Ram and Another** reported in **(2010) 13 SCC 249** to submit that the amount paid towards 'no fault liability' is not recoverable even if the claim for any reason is dismissed.

11. Per contra, Shri Deepak Gupta and Shri P.R. Patankar, learned counsel for respondents No.2 and 4 respectively, submit that learned Claims Tribunal has considered the place and manner of the accident based on the documents placed on record and rightly arrived at a conclusion that the appellant himself was solely negligent for the accident. They have jointly submitted that the appellant has already received an amount of Rs.25,000/- towards 'no fault liability'; simultaneously adding that, the impugned award passed by

learned Claims Tribunal is just and proper and do not call for any interference.

12. We have heard learned counsel appearing for the respective parties and perused the record carefully.
13. The appellant/claimant along with his claim application has filed disability certificate as Ex. P/1, *Dehatinailishi* as Ex. P/2 dated 07.05.2008, MLC report as Ex. P/3, Crime Detail Form with Spot-map as Ex. P/4 and medical prescriptions of Gayatri Hospital as Exs. P/7 to P/10. Perusal of spot-map (Ex. P/4) would show that the place of accident is in front of Pushpak Auto Sale and towards the side of the road where Pushpak Auto Sale is situated. Learned Claims Tribunal has discussed in detail at paragraph-17 of the impugned award with regard to topography of Khairagarh road to reach to the conclusion that while travelling of the motorcycle of both the drivers i.e. appellant and respondent No.1 at whose left hand, the accident occurred and arrived at a conclusion that the place of accident is of the right hand side (corner of the road) of the appellant. The said finding arrived by learned Claims Tribunal unless contrary pleaded and proved by the appellant cannot be said to be a perverse finding.
14. Normally, under the driving norms on public road, the person who is driving his vehicle or who is walking at pedestrian on public road should be always on his left side. Here, in the

instant case, admittedly, the place of accident is on extreme right corner of the road of the appellant. The place of accident was not disputed by learned counsel for the appellant, but it is only argued that the said spot-map only cannot be made the basis for arriving at a conclusion and holding negligence of any of the driver.

15. Now, in the light of material available on record and the submission made by learned counsel for the appellant that there was head on collision between two vehicles and the place of accident has been shown to be extreme left of respondent No.1, whether appellant alone can be made liable for the accident or whether there will be contributory negligence on the part of other driver to some extent when it is a case that both the motorcycles were moving even from the pleadings made by respondent No.1. True, it is that mere spot-map will not be sufficient to arrive at a finding of negligence of any of the driver, but when driver of the vehicle submitted reply to claim application denying his negligence and also entered into witness-box stating that it is driver of other vehicle who is negligent, then to evaluate the evidence of both the drivers (one claimant and other respondent No.1), the spot-map prepared by the Investigating Agency would be one of the important piece of evidence to arrive at a conclusion by learned Claims Tribunal and to assess the negligence on the part of drivers of both the vehicles.

16. The case law relied upon by learned counsel for the appellant i.e. **Jiju Kuruvila** (supra) is on different facts. In that case, the owner and driver of the offending bus have not denied the pleading of accident on account of rash and negligent driving of the bus by its driver. In the instant case, not only respondent No.1 has denied the allegation of rash and negligent driving of his, but has specifically pleaded that it is the appellant who was driving his motorcycle rashly and negligently and caused accident to his motorcycle, which was also reported by him making allegation of rash and negligent driving of the appellant. In case of **Minu Rout** (supra) the driver and owner did not file any counter statement and not entered into witness box to defend the plea of claim application about negligence and in that facts of the case, Hon'ble Supreme Court held that, only on the basis of spot map finding of negligence will not be correct.
17. Learned Claims Tribunal after examining the evidence and material available on record minutely discussed in detail in award the place of accident and arrived at a finding that the accident took place on the extreme left side of the respondent No.1 based on the pleadings and evidence of the respective parties as to the direction of travelling. From material available on record, it is apparent that one of the vehicles ongoing towards the extreme wrong side and caused accident, though the accident to be on head on

collision, but merely on the basis of head on collision only, the other driver of the vehicle who was travelling on the correct side i.e. left side of the road cannot be said to be negligent when the accident took place extremely on the left corner of the other driver i.e. respondent No.1.

18. The appellant/claimant in his evidence has not examined the person who was travelling with him as pillion rider, though specifically mentioned in reply to the claim application by respondent No.1 as Durgesh Kumar, who could be one of the best witness being an eyewitness to prove the fact of negligence. Even in the *Dehatinalishi* (Ex. P/2), it is mentioned that on the date of accident, Durgesh Kumar was sitting as pillion on the motorcycle of the appellant.
19. For the foregoing reasons, we do not find any error or infirmity in the impugned award passed by learned Claims Tribunal holding the appellant to be sole negligent in the accident and dismissing his claim.
20. Now we deal with the submission made by learned counsel for the appellant that learned Claims Tribunal erred in holding that the amount of Rs.25,000/- paid to him towards 'no fault liability' is recoverable and held the respondent No.2-Insurance Company to be entitled to recover the same from the appellant.

21. The submission of learned counsel for the appellant appears to have some force. The amount under Section 140 of the M.V. Act is being paid as compensation under the head of 'liability without fault', which reads as under :

“140. Liability to pay compensation in certain cases on the principle of no fault.”-(1) Where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section.

(2) The amount of compensation which shall be payable under sub-section (1) in respect of the death of any person shall be a fixed sum of [fifty thousand rupees] and the amount of compensation payable under that sub-section in respect of the permanent disablement of any person shall be a fixed sum of [twenty-five thousand rupees].

(3) In any claim for compensation under sub-section (1), the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due

to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person.

(4) A claim for compensation under sub-section (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement.

[(5) Notwithstanding anything contained in sub-section (2) regarding death or bodily injury to any person, for which the owner of the vehicle is liable to give compensation for relief, he is also liable to pay compensation under any other law for the time being in force:

Provided that the amount of such compensation to be given under any other law shall be reduced from the amount of compensation payable under this section or under section 163A.]”

22. Sub-section (4) of Section 140 of the M.V. Act very specifically envisaged that the claim for compensation under sub-section (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of

whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement. The language of said section is very clear and specific that the amount of compensation under this provision is on the principle of 'no fault'. When any person suffered death or permanent disablement, then the legal representatives of the deceased or claimant in case of permanent disablement becomes entitled for the specific amount prescribed under sub-section (2) of Section 140 of the M.V. Act without showing as to who is negligent.

23. The Hon'ble Supreme Court in the matter of **Indra Devi** (supra) has held thus :

“5. The claimants took the matter to the High Court in appeal (Civil Miscellaneous Appeal No.323 of 2002). The High Court dismissed the appeal by judgment and order dated 20.08.2002. The High Court agreed with the Tribunal's finding that the deceased alone was responsible for the accident and hence, the claimants were not entitled to any compensation. Unfortunately, the High Court did not address the issue of no fault compensation and overlooked the direction of the Tribunal

for refund of the amount of interim compensation alongwith interest @ 9% p.a.

7. The impugned direction is clearly erroneous and unsustainable in law. The Tribunal has completely failed to realize the true nature and character of the compensation in terms of Section 140 of the Act. The marginal heading to Section 140 describes it as based “on the principle of no fault”. As the expression “no fault” suggests the compensation under Section 140 is regardless of any wrongful act, neglect or default of the person in respect of whose death the claim is made.

8. We have examined the nature of the “no fault compensation” payable under Section 140 of the Act in *Eshwarappa v. C.S. Gurushanthappa*, (2010) 8 SCC 620, the judgment in which is pronounced today. We, therefore, do not wish to elaborate the point further. Suffice to say that in view of our judgment in *Eshwarappa v. C.S. Gurushanthappa*, the Tribunal was patently in error, in directing for the refund of the amount of “no fault compensation” already paid to the claimants, to the insurance company. The High Court was equally in error in missing out this grave mistake in the judgment and order passed by the Tribunal and not setting it right.”

24. In view of specific provision of Section 140 of the M.V. Act and the law laid down by Hon'ble Supreme Court in **Indra Devi** (supra), learned Claims Tribunal has committed error in issuing direction for recovery of amount awarded towards 'no fault liability' under Section 140 of the M.V. Act. The said direction issued by learned Claims Tribunal in the impugned award is not sustainable and it is hereby set aside. Now, there will be no recovery of the amount received by the appellant towards 'no fault liability'.
25. In the result, the appeal is allowed in part and the impugned award is modified to the extent that the amount of Rs.25,000/- paid to the appellant as compensation towards 'no fault liability' will not be recovered.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge