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HIGH COURT OF CHHATTISGARH, BILASPUR**Misc. Appeal (C) No. 139 of 2013**

*(Arising out of order dated 29.09.2012 passed in MACT No.51 of 2011
by the 6th Additional Motor Accident Claims Tribunal, Durg)*

Krishna Kumar Yadav S/o Late Mannuram Yadav Aged About 30
Years R/o Nehru Chowk, Charoda Basti Bhilai-3, Tah. And Distt.
Durg C.G., P.S. Bhilai-3., Chhattisgarh

---- Appellant**Versus**

1. Jeeva Das Manikpuri Aged About 28 Years R/o Presently Residing At Near Durga Temple, Power House, Bhilai, Distt. Durg C.G., Permanent Add.- Vill. Sirsakhurd Jewra, Distt. Durg C.G.
2. Balvinder Singh S/o Late Darbara Singh R/o Presently Residing At Bilaspur Road, Fafadih Raipur, Distt. Raipur C.G., P.S. Fafadih, District : Raipur, Chhattisgarh
3. Manager Shriram General Insurance Company Limited, Address - E/8, Rikko Industrial Area Sitapur, Jaipur Rajasthan PIN 302022 P.S. Sitapur Through Branch Manager, Shriram General Insurance Company Limited Kikka Petrol Pump, Rajnandgaon, Distt. Rajnandgaon C.G. P.S. Lalbag

For Appellant	: Shri B.P. Singh, Advocate.
For Respondents No. 1 & 2	: None.
For Respondent No. 3	: Shri Pankaj Agrawal, 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****20.05.2020**

1. Challenge in this appeal is to the award dated 29.09.2012 passed by learned 6th Additional Motor Accident Claims Tribunal,

Durg, Chhattisgarh in Motor Accident Claims Tribunal (hereinafter referred to as 'Claims Tribunal') whereby learned Claims Tribunal allowed the claim application in part and awarded a total compensation of Rs.96,849/- after deducting 50% of the calculated amount of compensation towards contributory negligence.

2. Brief facts necessary for disposal of this appeal, are that, on 31.05.2011 when appellant was travelling on his motorcycle bearing registration No.CG07/F/7112 and going to his house at Charoda from Patan at about 04.45 PM on Patan – Durg road at that relevant time, one Truck bearing registration No.CG04/G/4784 (hereinafter referred to as 'offending truck') dashed the motorcycle of the appellant, in which, he suffered grievous injuries over his person. Thereafter, he was taken to the Government Hospital, Patan for treatment and then shifted to Cosmetic Surgery Institute and Burn Centre, Raipur. The accident was reported to the concerned police station, based on which, Crime No.150/2011 has been registered for the offence punishable under Sections 279, 337 and 338 of the IPC against the driver of the offending truck.

3. The claimant subsequently filed a claim application before the competent Claims Tribunal claiming Rs.11,25,000/- as compensation on the grounds amongst other that due to

aforementioned accident, he suffered grievous injury resulting in permanent disability over his right hand and due to disability, he has lost his job. In the claim application, there was mentioned about the total amount of medical expenses incurred by him as Rs.2,20,000/-.

4. The pleadings made in the claim application was resisted by non-applicants No.1 and 2, who are driver and owner of the offending truck. They have pleaded that no accident took place from the offending truck but the appellant/claimant was lying on road prior to passing of the vehicle. It was also pleaded that the driver of the offending truck have only helped injured and have taken him on the side of the road.

5. The Insurance Company/non-applicant No.3 filed reply to the claim application and pleaded that the amount claimed in the claim application is highly exaggerated and there was violation of conditions of insurance policy.

6. The learned Claims Tribunal on appreciation of pleadings and evidence placed on record by respective parties have arrived at a finding that the appellant suffered injury in a accident with Truck bearing No. CG04/G/4784, the appellant was also contributory negligent to the extent of 50%, suffered grievous injury, no permanent disability, there was no violation of conditions of insurance policy and awarded a total sum of Rs.

96,849/- after deducting 50% of the amount towards contributory negligence. (Total amount calculated was 1,93,698/-).

7. Learned counsel for the appellant submits that the Claims Tribunal erred in holding the appellant to be contributory negligent, ignoring that driver, owner and insurer of the offending vehicle have not placed any evidence before the learned Claims Tribunal to prove the fact of contributory negligence pleaded in reply. It is also contended that learned Claims Tribunal further erred in not awarding any amount towards permanent disability though it has been proved by the appellant by examining Dr. Akhilesh Yadav (AW-3) into the witness box, who has proved the disability certificate (Ex.P/66) wherein 11% permanent disability on the right hand of the appellant has been mentioned. The total medical expenses which was incurred by the appellant has not been considered and awarded by the learned Claims Tribunal though the appellant has placed all the relevant medical bills in proof of the medical expenses and also examined treating doctor. The learned Claims Tribunal has ignored the number of operations undergone by the appellant and awarded only Rs.500/- towards pain and suffering. Due to the nature of injury and also the affected part of body appellant has to suffer for his whole life. Loss of income during period of treatment is not awarded.

8. Per contra, learned counsel for respondent No.3/Insurance Company submits that all the proved medical bills have been awarded by the learned Claims Tribunal, there was head on collision of the two vehicles i.e. motorcycle of the appellant and the offending truck and considering that aspect, learned Claims Tribunal rightly held the appellant to be contributory negligent in the accident. He further submits that compensation awarded by learned Claims Tribunal was just and proper, which do not call for any interference.

9. We have heard learned counsel appearing for parties and perused the entire record carefully.

10. So far as the first ground raised by learned counsel for the appellant that the learned Claims Tribunal have erred in holding the appellant to be contributory negligent in the accident, we have perused the copy of First Information Report (Ex.P/2), spot map (Ex.P/4) and also the evidence placed on record by the appellant. Respondents No.1 and 2 have not entered into the witness box neither the Insurance Company has brought any witness to prove the fact of contributory negligence as asserted by them.

11. Contributory negligence is a fact required to be proved by the person/party by placing cogent and reliable piece of evidence, who takes a plea of contributory negligence. It is a

settled law that by mere head on collision of two vehicles by itself cannot be presumed that driver of both the vehicles are contributory negligent in the accident more so when one of the vehicle is a four wheeler (heavy goods vehicle and other one two wheeler). To prove the fact of contributory negligence the person asserting the fact has to place on record specific evidence as to the fact that the injured or driver of the other vehicle failed to take appropriate care and failed to perform his legal duty.

12. The issue of contributory negligence has been considered by Hon'ble Supreme Court in the matter of **Usha Rajkhowa and Others v. Paramount Industries and Others**¹.

“22. Keeping these principles in mind, we find that there was absolutely no evidence to suggest that there was any failure on the part of the part of the car driver to take any particular care or that he had breached his duty in any manner. Such breach on his part had to be proved by the insurance company as it was its burden and for that, the panchnama of the spot, showing tyre marks caused by brakes, and the panchnama of the damaged car and the truck could have been brought on record. The insurance company has obviously failed to discharge its burden. We, therefore, respectfully follow the abovementioned judgment.”

13. Further, in the matter of **Minu Rout & Anr. v. Satya Pradyumna Mohapatra & Ors.**² Hon'ble Supreme Court has

¹ (2009) 14 SCC 71

² (2013) 10 SCC 695

held as to how the plea of contributory negligence is to be considered and decided and held thus -

“17. The Tribunal, on appreciation of the oral and documentary evidence, has recorded the erroneous finding by placing strong reliance upon the charge-sheet- Exh.1 without considering the fact that the criminal case was abated against the deceased and further has made observation in the judgment that the appellants had not produced the FIR. Therefore, it has held that there was 50% contributory negligence on the part of the deceased driver in causing accident. 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.

18. For the aforesaid reasons, the findings and reasons recorded by the Tribunal on the contentious Issue 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. The Tribunal has accepted the part of oral evidence of the eyewitnesses regarding the scene of accident and it has erroneously placed reliance upon the charge-sheet, Ext. 1, which was filed against the driver of the offending truck and the deceased to hold that there was contributory negligence on his part by ignoring the fact that the criminal case against the deceased was abated. Therefore, we have to hold that the finding of fact recorded on Issue 1 by the Tribunal and affirmed by the High Court in the impugned judgment, is erroneous for want of proper consideration of pleadings and legal evidence by both of them. Accordingly, we have answered Point 1 in favour of the appellants insofar as the finding recorded by the Tribunal on the question of contributory negligence of 50% on the part of the deceased is concerned.”

14. Again, in the matter of **Jiju Kuruvila and others v. Kunjujamma Mohan and others**³, the Hon'ble Supreme Court held thus :

“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

³ (2013) 9 SCC 166

driver. In absence of such direct or corroborative evidence, the Court cannot give any specific finding about negligence on the part of any individual.”

15. The law enunciated in the aforementioned law laid down by Hon'ble Supreme Court is that the mere collision of two vehicles will only not be sufficient to arrive at a conclusion that there was contributory negligence on the part of both the drivers. The Hon'ble Supreme Court further held that mere making the pleading is not sufficient to prove the fact of contributory negligence if it is alleged by one party or driver of the other vehicle. The contributory negligence cannot be said to be proved unless and until there is any direct or corroborative piece of evidence placed on record by the party asserting this fact.

16. If the facts of the present case are examined in the light of law laid down by Hon'ble Supreme Court, the spot map (Ex.P/4) shows that the accident took place on the extreme left on which the motorcycle of the appellant was travelling. Apart from this, the claimant himself has examined and in categorical terms, has stated that the accident occurred due to rash and negligent driving of the driver of the offending truck. Further, the First Information Report (Ex.P/2) has been lodged against the driver of the offending truck holding him to be negligent or liable for causing the accident. The owner and driver of the offending truck

has not been entered into the witness box neither the Insurance Company has brought any evidence to prove the fact that the appellant was also contributory negligent.

17. In the aforementioned facts and circumstances of the case as well as considering the law laid down by Hon'ble Supreme Court, we are of the view that the learned Claims Tribunal has erred in holding the appellant to be contributory negligent to the extent of 50% in the accident. We set aside the finding recorded by learned Claims Tribunal that the appellant was liable for contributory negligence to the extent of 50%.

18. So far as the next ground raised by learned counsel for the appellant that amount of compensation awarded towards other heads is on lower side is concerned, the learned Claims Tribunal has awarded the total amount of Rs.1,88,698/- towards medical expenses. Though learned counsel for the appellant has argued that all the medical bills have not been considered by learned Claims Tribunal, but learned counsel for the appellant failed to demonstrate as to which bill is not considered by the Claims Tribunal and therefore, we uphold the finding recorded by learned Claims Tribunal that the appellant is entitled for total amount of compensation of Rs.1,88,698/- as awarded by learned Claims Tribunal.

19. So far as the amount of Rs.500/- towards pain and suffering is concerned, though the appellant has suffered major injury on his right hand, but it has to be looked into that what was the nature of injury suffered by him and part of the body. The medical documents (Ex.P/8 and Ex.P/9) shows that he suffered injury in his right hand. The appellant took treatment as indoor patient for the period from 31.05.2011 to 21.06.2011 and from 21.12.2011 to 23.12.2011. Discharge Tickets (Ex.P/8 and Ex.P/9) have been proved by Dr. Sunil Kalda (AW-4), who in his statement stated that the appellant has undergone operation on 31.05.2011 and further on 23.12.2011.

20. From the above two documents (Ex.P/8 and P/9) as well as considering the evidence of Dr. Sunil Kalda (AW-4), it is evident that till 23.12.2011, the injury suffered by the appellant has not been cured. The second operation itself shows that the appellant was continuously suffering from the injuries suffered by him in the accident, which is of more than 6 months from the date of accident. In the said facts and circumstances of the case, we are of the view that the appellant is entitled for a total sum of Rs.10,000/- towards pain and suffering instead of Rs.500/- awarded by learned Claims Tribunal.

21. The other argument which has been raised by learned counsel for the appellant that the learned Claims Tribunal has

not awarded any amount of compensation towards loss of income due to permanent disability is concerned, we have minutely examined the evidence of Akhilesh Yadav (AW-3), who has issued the disability certificate (Ex.P/66) and evidence of Dr. Sunil Kalda (AW-4). Perusal of disability certificate (Ex.P/66), it would show that the appellant has suffered injury over his right hand, which is permanent in nature. The injury as recorded in Ex-P/7 reads as under : -

- “1. Massive lacerated wound on right side of chest extended from right nipple to right side of axilla vertically $\frac{1}{2}$ x 2 – 8 about;
- 2. Lacerated wound on right inner side of arm near axilla vertically along the arm to middle third of arm about $\frac{1}{2}$ x 1 x 6 cm, muscle ruptured;
- 3. Lacerated wound on chin $\frac{1}{4}$ x $\frac{1}{2}$ x 3 cm;
- 4. Abrasion 1 x 1 supb on right knee joint.”

22. In cases of personal injury, the claimants can be entitled for the award of compensation towards pecuniary losses and non-pecuniary losses. Pecuniary loss can be calculated but it is difficult to quantify non-pecuniary losses. To quantify the award of compensation, different circumstances have to be taken into

consideration. In case at hand, the appellant's right hand was operated twice, skin grafting was done by Dr. Sunil Kalda (AW-4) and become permanent disabled as assessed by Dr. Akhilesh Yadav (AW-3) to the extent of 11%. Though the appellant may not loose the income entirely but may suffer some loss of income due to injury as he may not be able to perform his work like he was performing prior to the accident.

23. In the aforementioned facts and circumstances of the case, nature of injury and the evidence of Dr. Akhilesh Yadav (AW-3) that the appellant will face difficulty to do the heavy work from his right hand and shoulder, in our considered opinion, the appellant will not be entitled for loss of income towards permanent disability, but towards loss of chances to be eligible for all nature of employment. The appellant has to live with the permanent disability on his right hand for whole of his life in view of this we consider it fit to award Rs.25,000/- towards loss of amenities in life.

24. The other heads, on which the learned Claims Tribunal has awarded the compensation i.e. transportation, special diet and attendant appears to be just and reasonable.

25. Learned counsel for appellant lastly argued that the learned Claims Tribunal has not paid any amount of

compensation towards loss of income during the period of treatment.

26. From the medical documents (Ex.P/8 and Ex.P/9) and evidence of Dr. Sunil Kalda (AW-4), it is clear that the appellant could not able to perform his duty due to injury suffered by him from 31.05.2011 till 23.12.2011. The employer- Kapil Jain has been examined as AW-2 to prove the certificate (Ex.P/64) wherein it has been stated that the appellant/claimant was drawing salary of Rs.13,500/- but due to major accident, he was not able to continue with them from 31.05.2011, which shows that due to accident, the appellant has lost the private job which he was doing earlier. Kapil Jain (AW-2) has further stated that the appellant was working on the post of Sales Executive, though the employer has not proved the income by producing any cogent and reliable piece of evidence like salary register before the Claims Tribunal, but looking to the age of the appellant as well as nature of work which the appellant was performing, which remained uncontroverted as no specific question has been put to this witness, in our considered opinion, salary of the appellant can be taken as Rs.10,000/- per month and we deem it appropriate to award loss of income for the period of 7 months i.e. Rs.70,000/- during the laid down period.

27. In view of above, the appellant/claimant will be now entitled for total compensation of Rs.2,93,698/- (1,88,698 + 10,000 + 25,000 + 70,000) instead of Rs.98,849 as awarded by the learned Claims Tribunal. The additional amount of compensation shall carry interest at the rate of 7% per annum from the date of filing of the claim application till its realization. The other conditions imposed by the learned Claims Tribunal shall remain intact.

28. The appeal is allowed in part and impugned award dated 29.09.2012 is modified to the extent indicted herein-above.

Sd/-

Sd/-

(P.R. Ramachandra Menon)
Chief Justice

(Parth Prateem Sahu)
Judge

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