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HIGH COURT OF CHHATTISGARH, BILASPUR**M. A. (C) No. 551 of 2015**

Smt. Nanda Raikar Wd/o Late Rajkumar Raikar, aged about 42 Years, R/o Khairagarh Road, Ward no. 2, Jodhsingh Colony, Dongargarh, Tahsil Dongargarh, District Rajnandagaon (C.G.)

---- Appellant**Versus**

1. Chain Lal S/o Late Bhagchand, aged about 46 years, R/o Village Bhaisara, Police Station and Tahsil Dongargarh, District Rajnandagaon (C.G.)

Non-Applicant No. 1

2. The New India Assurance Company Limited, Regional Branch Office, Kamghi Line, Rajnandgaon, District Rajnandgaon (C.G.)

Non-Applicant No. 2

3. Iffco Tokiyo General Insurance Company Limited, Regional Office, Iffco Sadar, C-1, Saket Delhi, Branch Office, Bhilai, District -Durg (C.G.)

Non-Applicant No. 3

4. Manish Kumar Raikar S/o Late Rajkumar Raikar, aged about 26 years.
5. Sanni Kumar Raikar S/o late Rajkumar Raikar, aged about 24 years.
6. Ashish Kumar Raikar S/o Late Rajkumar Raikar, aged about 21 years.

No. 4 to 6 are R/o Khairagarh Raod, Ward No. 2, Jodhsingh Colony, Dongargarh, Tahsil Dongargarh, District Rajnandgaon (C.G.)

7. Smt. Manisha D/o Late Rajkumar Raikar, caste Mahar, aged about 25 years, R/o Varasivni, District Balaghat (M.P.)

(Respondent No 4 to 7 are applicants before claim tribunal)

---- Respondents

For Appellant	:	Shri Aman Yadav, Advocate on behalf of Shri B.P. Singh, Advocate
For Respondent No.1	:	Smt. Bhavika Kotecha, Advocate
For Respondent No.2	:	Shri Sudhir Agrawal, Advocate

Hon'ble Shri Justice Parth Prateem Sahu
Judgment on Board

05/11/2020

1. Appellant/claimant has filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') challenging the award dated 11/02/2015 passed by the Additional Motor Accident Claims Tribunal, Link Court Dongargarh, District Rajnandgaon, Chhattisgarh (hereinafter referred to as 'Claims Tribunal') in Claim Case No.19 of 2011 whereby learned Claims Tribunal allowed the claim application in part and awarded Rs.1,66,000/- as compensation in a fatal accident case.
2. Facts of the case in nutshell, are that, on 03/09/2010, non-applicant No.1 while driving his motorcycle bearing No.CG-08/J/8289 dashed Rajkumar Raikar and caused accident. In the aforementioned accident, Rajkumar Raikar suffered grievous injuries, he was taken to Government Hospital, Rajnandgaon where during the course of treatment, he died. The accident was reported to concerned Police Station, based upon which, crime was registered against non-applicant No.1 and after completion of investigation, charge-sheet was submitted before the Court of Judicial Magistrate First Class, Dongargarh, Chhattisgarh.
3. Claimants, who are widow and children of deceased filed an application under Section 166 of the M.V. Act pleading therein

that on the date of accident, deceased was employed in the Veterinary Department, posted at Devkatta and earning Rs.15,000/- per month. On account of untimely death of Rajkumar Raikar, claimants have suffered irreparable loss and claimed Rs.19,80,000/- as compensation.

4. Non-applicant No.1 submitted reply to claim application, while denying the pleadings made therein, pleaded that it is the deceased who drove his motorcycle rashly and negligently dashed motorcycle of non-applicant No.1, in which, he suffered fracture injury over his hand. Criminal case registered against the deceased was filed by placing closure report.
5. Non-applicant No.2/Insurance Company submitted reply to claim application, while denying the pleadings made therein, pleaded that non-applicant No.1 was not possessed with valid and effective driving licence and accident was on account of head on collision between two motorcycles, as such, there was contributory negligence of both vehicles.
6. Non-applicant No.3/Insurance Company submitted reply to claim application, while denying the pleadings made therein, it was further pleaded that it has been impleaded in party array of claim application without pleading a single line against it.
7. On appreciation of pleadings, evidence and material placed on record by respective parties, learned Claims Tribunal held that non-applicant No.1 while driving his motorcycle bearing

No.CG-08/J/8289 rashly and negligently caused accident, Rajkumar Raikar died on account of motor accidental injuries suffered by him, breach of policy conditions of policy issued for motorcycle bearing No.CG-08/J/8289 was not found to be proved. It was further held that accident was on account of rash and negligent act of driver of both the motorcycles, as such, deceased was contributory negligent in the accident to the extent of 50%. After calculating the amount of compensation as Rs.3,32,000/- in total, awarded Rs.1,66,000/- after deducting 50% towards contributory negligence on the part of deceased.

8. Shri Aman Yadav, learned counsel for the appellant submits that deceased was a Government servant. In claim application, it is specifically pleaded that deceased Rajkumar Raikar was an employee of Veterinary Department and posted at Devkatta on the post of *Paricharak* (Attending Staff) and earning Rs.15,000/- per month. He contended that learned Claims Tribunal in absence of any documentary evidence placed on record with regard to employment of deceased as Government Servant and earning Rs.15,000/- per month, assessed income of deceased on notional basis as Rs.3000/- per month. It is pointed out that inadvertently the document of employment of deceased as Government Servant and his income could not be placed on record before learned Claims Tribunal, but the claimants have filed those documents before this Court for

consideration along with an application under Order 41 Rule 27 of CPC. He submits that the documents placed on record as additional evidence shows the employment of the deceased with the State Government in the Veterinary Department, hence, an opportunity may be granted to the appellant to prove the income by placing cogent and admissible piece of evidence in this regard. He argued that application under Order 41 Rule 27 of the CPC be allowed and additional evidence filed may be taken on record and appropriate orders may be passed in this appeal.

9. It is contended that learned Claims Tribunal taking into consideration only the head on collision between two vehicles has held the deceased to be 50% contributory negligence, which is erroneous. He submits that no admissible piece of evidence was placed on record by respondents to prove the contributory negligence, if any, upon the deceased and in absence of any evidence, learned Claims Tribunal erred in arriving at a finding and holding the deceased to be contributory negligent to the extent of 50%
10. Per contra, Shri Sudhir Agrawal, learned counsel for respondent No.2 submits that learned Claims Tribunal after taking into consideration the entire facts and circumstances of the case, date of accident and evidence placed on record by respective parties, rightly assessed the income of deceased on notional basis, as the claimants have not placed on record any

document to prove employment and income of deceased. He further submits that there was head on collision between two motorcycles, which is not in dispute. Learned Claims Tribunal based on the material available on record rightly arrived at a finding that deceased himself was contributory negligent to the extent of 50%, which does not call for any interference. He submits that even if this Court finds the case to be remanded back then also, the remand may be made only for the purpose of ascertaining the income of deceased and entire case may not be remitted back for fresh consideration.

11. I have heard learned counsel for the respective parties and perused the record carefully.
12. So far as the submission of learned counsel for the appellant with regard to filing of an additional documents along with application under Order 41 Rule 27 of the CPC to prove the employment of deceased with Government Department and his earning is concerned, appellant has placed on record the copy of amount calculated under Madhya Pradesh Government Employees Group Insurance, 1985 of late Rajkumar Raikar. In this document, date of employment of deceased with the Government Department has been shown to be 03/11/1987 as Group 'D' employee and Class of post has been mentioned as 'Class-IV'. One certificate is placed on record issued by one of the Centre of Government Department showing the period of service of deceased since last 25 years.

13. Taking into consideration the object of M.V. Act, under which, application under Section 166 of the M.V. Act is filed by the claimants seeking amount of compensation against death of husband of claimant No.1 and father of other claimants, just amount of compensation is to be awarded to the claimants. The Motor Vehicles Act, 1988 is a beneficial piece of legislation. It is the bounden duty upon Courts and Tribunals to award just amount of compensation, for which, claimants are entitled for in accordance with law.
14. In view of above, I am of the considered opinion that claimants have made out the case for allowing I.A. No.01, which is an application under Order 47 Rule 27 of the CPC and taking the documents annexed along with it as additional evidence on record.
15. In view of aforementioned documents accepted as additional evidence, now the claimants are required to prove the income of deceased by bringing the cogent and admissible piece of oral evidence in this regard to prove the documents taken as additional evidence, which can only be done before learned Claims Tribunal. For proving the document and recording evidence, case is required to be remitted back to learned Claims Tribunal.
16. So far the submission made by learned counsel for the appellant with regard to contributory negligence held by Claims

Tribunal to be erroneous, I have perused the impugned award wherein Claims Tribunal in paragraph-14 of impugned award has categorically recorded that non-applicant No.1 did not enter into witness box to prove his pleading and further that, non-applicant No.1 could be the best witness for proving contributory negligence, but concluded that there was contributory negligence on the part of deceased to the extent of 50% only considering head on collision between two motorcycles. Contributory negligence is a fact to be proved by the party asserting it. As recorded by Claims Tribunal that non-applicant No.1 could be the best witness to prove the plea of contributory negligence, but he did not enter into witness box, therefore, in the opinion of this Court, unless and until some clinching and admissible piece of evidence is brought on record showing the deceased also to be negligent to some extent, merely on the basis of head on collision of two motorcycles, it cannot be arrived at a finding that deceased (one of the driver of the motorcycles) was also negligent to some extent.

17. 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 in which, Hon'ble Supreme Court has held thus :

“22. Keeping these principles in mind, we find that there was absolutely no evidence

¹ (2009) 14 SCC 71

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.”

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

² (2013) 10 SCC 695

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.”

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

“20.5 The mere position of the vehicles after accident, as shown in a Scene

³ (2013) 9 SCC 166

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.”

20. If the facts of the case are considered in the light of aforementioned law laid down by Hon'ble Supreme Court except the pleading made by non-applicant No.1, there is no evidence placed on record much less clinching and admissible piece of evidence to arrive at a conclusion that deceased also contributed the accident to some extent. In absence of any such evidence brought on record by non-applicants, finding arrived at by learned Claims Tribunal that deceased was also contributory negligent to the extent of 50% is not sustainable in the eyes of law and it is hereby set aside.

21. For the foregoing reasons, the appeal is allowed in part. The impugned award so far as it relates to computation of amount of compensation based on income assessed by Claims Tribunal at Rs.3,000/- per month and Rs.36,000/- per annum is set aside. The case is remitted back to the Court of Additional Motor Accident Claims Tribunal, Link Court Dongargarh, District Rajnandgaon, Chhattisgarh for assessing income of deceased, computation of total amount of compensation based on the additional evidence placed on record by respective parties.
22. It goes without saying that the parties will be at liberty to amend their pleadings and lead further evidence documentary and oral in support of their claim. Learned Claims Tribunal will recompute the amount of compensation based on material brought on record along with evidence only with regard to income after affording an opportunity of hearing to all the parties concerned keeping in mind the ruling of Hon'ble Supreme Court in case of **Sarla Verma (Smt.) and others v. Delhi Transport Corporation and another⁴, National Insurance Co. Ltd. v. Pranay Sethi⁵ and Magma General Insurance Company Limited v. Nanu Ram Alias Chuhru Ram and Others⁶**. Learned Claims Tribunal is directed to decide the claim application at the earliest preferably within a

⁴ (2009) 6 SCC 121

⁵ (2017) 16 SCC 680

⁶ (2018) 18 SCC 130

period of five months from the date of receipt of copy of the judgment passed by this Court.

23. Original record of Claim Case No.19 of 2011 be sent back forthwith along with copy of this judgment. Registry is directed to place on record of claim case, copy of application under Order 41 Rule 27 of the CPC along with documents/ Annexures enclosed along with it.

Sd/-

(Parth Prateem Sahu)
Judge

Yogesh