(Proceedings through video conferencing)

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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 806 of 2015

- Tulsi Bai, Wd/o Late Ramkhilawan Jaiswal, aged about 45 years, R/o village Birkoni, Thana Hirri, District Bilaspur (CG)

---- Appellant (Claimant)

Versus

1. Jagjeet Singh, S/o Preetam Singh, aged about 50 years, R/o In front of Banki Lambi Chal, PS Banki Mongra, Tahsil Kataghora, District Korba (CG) (Driver)
2. Mahesh Yadav, S/o Vishnu Dev, R/o Ward No.46, Quarter No.MQL/2, Balgi Project, PS-Banki Mongra, Tahsil Kataghora, Dist Korba (CG) (Owner)
3. Branch Manager, The Oriental Insurance Company Limited, Regional Office- 1st Floor, Rama Trade Centre, In front of Rajeev Plaza, Old Bus Stand, Bilaspur, Tahsil & District Bilaspur (CG) (Insurance Company)

---- Respondents

For Appellants	:	Shri Samir Singh, Advocate
For Respondent No.3	:	Smt. Chitra Shrivastava, Advocate

Hon'ble Shri Justice Parth Prateem Sahu
Order On Board

18/8/2021

1. Claimant/appellant has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (for brevity 'the Act of 1988') challenging the award dated 10.11.2014 passed by the learned 7th Additional Motor Accident Claims Tribunal, Bilaspur in Claim Case No.215/2014 thereby allowed claim application in part; awarded Rs.41,000/- as compensation to claimant in an injury case alongwith interest @ 9% p.a., after deducting

50% of total calculated amount of compensation towards contributory negligence on the part of driver of vehicle in which claimant was travelling.

2. Facts of the case, in nutshell, are that on 10.10.2010 claimant-appellant along with other villagers had gone to Chandrahasini Temple, Chandarpur on Tata Magic vehicle bearing registration number CG10-F-9761 for offering prayer. While returning from Chandarpur, when they reached in front of High Court building located on Bilaspur-Raipur Highway, one truck bearing registration number CG12-C-2467 (for short 'offending vehicle'), driven by non-applicant No.1 rashly and negligently, dashed Tata Magic and dragged it about 50 mts. In the aforementioned accident, claimant suffered fracture injury on his right leg, jaw, left tibia & fibia bones and grievous injuries on her shoulder, elbow, wrist etc. She was immediately taken to District Hospital, Bilaspur for treatment from where she was shifted to Sanjeevani Hospital & Research Centre, Bilaspur on 12.10.2010 where she took treatment as inpatient till 1.11.2010. Incident was reported to concerned police station based on which crime bearing No.331/10 was registered against non-applicant No.1-driver.

3. Claimant-appellant filed an application under Section 166 of the Act of 1988 claiming total amount of Rs.3,95,000/- as compensation pleading therein that prior to accident, claimant was working as Labourer and thereby earning Rs.4,500/- per month. However, due to injuries suffered by her in

aforementioned accident, she is unable to work as before.

4. Non-applicant No.1 & 2 filed reply to claim application denying the facts pleaded therein. It was further pleaded that non-applicant No.1 was possessing valid and effective driving license on the date of accident; there was valid permit and fitness certificate with offending vehicle. The offending vehicle was insured with non-applicant No.3- Insurance Company, as such, liability to pay amount of compensation, if awarded any, would be of non-applicant Insurance Company.

5. Non-applicant No.3-Insurance Company also submitted its reply to claim application and denied the facts pleaded therein. It was further pleaded that there was contributory negligence on the part of driver of Tata Magic in which injured claimant was travelling as accident was between two motor vehicles. Amount of compensation claimed is highly exaggerated. Vehicle on which claimant was travelling was overloaded and its driver was not possessing valid & effective driving license. Driver of offending vehicle was also not possessing valid and effective driving license at the time of accident, as such, there was breach of essential condition of insurance policy. Hence, the insurance company is not liable to indemnify the insured.

6. The Claims Tribunal upon appreciation of pleadings and evidence brought on record by respective parties, has held that claimant suffered motor accidental injuries on her person due to rash and negligent driving of driver of both vehicles; driver of both vehicles involved in accident were equally

responsible for accident and there was no breach of any condition of insurance policy. The Claims Tribunal computed total compensation of Rs.82,000/-, out of which 50% was deducted towards contributory negligence on the part of driver of vehicle in which claimant was travelling and awarded Rs.41,000/- as compensation.

7. Shri Sameer Singh learned counsel for claimant-appellant would submit that the Claims Tribunal erred in deducting 50% of total compensation towards contributory negligence on the ground that driver of vehicle on which claimant-appellant was travelling was also contributory negligent to the extent of 50%. He submits that even if driver of vehicle on which appellant was travelling was equally responsible for accident, then also for the occupants of any of the vehicles involved in accident, it would be case of 'composite negligence' and not 'contributory negligence'. Claimant has an option to file claim application against driver, owner and insurer of any one of vehicles or both. Appellant has chosen to file claim against driver,owner and insurer of offending vehicle and for that vehicle the claimant would be a third party, hence there cannot be deduction of any amount from total calculated amount of compensation towards contributory negligence. He places his reliance on decisions of Hon'ble Supreme Court in **T.O. Anthony vs. Karvarnan & ors** reported in **(2008) 3 SCC 748** and **Khenyei Vs. New India Assurance Company Limited & others** reported in **(2015) 9 SCC 273.**

He further submits that the Claims Tribunal erred in awarding meagre amount of compensation. The Claims Tribunal has not awarded any amount of compensation towards grievous injuries overlooking the documents of treatment placed on record. He further submits that the Claims Tribunal awarded Rs.5,000/- towards medical expenses; Rs.10,000/- towards pain and sufferings; Rs.5,000/- towards conveyance & special diet; Rs.5,000/- towards attendant and Rs.10,000/- towards loss of income. Looking to the nature of injuries and period of treatment of appellant as inpatient, the amount of compensation be suitably enhanced.

8. On the other hand, Mrs. Chitra Shrivastava, learned counsel for respondent No.3 Insurance Company would submit that the Claims Tribunal taking into consideration date of accident, the fact that claimant-appellant failed to prove her income in accordance with law, assessed her income on notional basis. She further submits that the Claims Tribunal on appreciation of evidence placed on record by respective parties has rightly come to conclusion that there was contributory negligence on the part of driver of both vehicles. Claimant-appellant has not arrayed owner, driver & insurer of vehicle of which she was an occupant, hence the Claims Tribunal was justified in deducting 50% of calculated amount of compensation towards contributory negligence on the part of driver of vehicle in which claimant was travelling. She further submits that amount of compensation awarded by the Claims Tribunal is just and proper, which does not call for any interference.

9. I have heard learned counsel for the parties and perused the record of the Claims Tribunal.

10. So far as submission of learned counsel for claimant/ appellant with regard to deduction of 50% of calculated amount of compensation towards contributory negligence is concerned, undisputedly claimant-appellant was not driver of Tata Magic, she was an occupant along with others. Principle of contributory negligence will apply for the act of driver of two vehicles and not for occupants of vehicle. For occupants of vehicle, it would be case of composite negligence and not contributory negligence. Legal representatives of deceased or victim can seek compensation from driver, owner and insurer of any of vehicles or both the vehicles involved in accident. In case of **T.O. Anthony (supra)** the Hon'ble Supreme Court has considered the issue with regard to contributory negligence and 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 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 it is necessary for the court to determine the extent of liability of each wrongdoer 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 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.

In case of **Khenyei Vs. New India Assurance Company Limited & others** reported in **(2015) 9 SCC 273** the issue with regard to contributory negligence and composite negligence has come up for consideration and Hon'ble Supreme Court has held thus:-

> “16.In Pawan Kumar v. Harkishan Dass Mohan Lal[19], the decisions in T.O. Anthony[17] and Hemlatha[18] have been affirmed, and this Court has laid down that where the plaintiff/ claimant himself is found to be negligent jointly and severally, liability cannot arise and the plaintiff's claim to the extent of his own negligence, as may be quantified, will have to be severed. He is entitled to damages not attributable to his own negligence. The law/distinction with respect to contributory as well as composite negligence has been considered by this Court in Machindranath Kernath Kasar v. D.S. Mylarappa[20] and also as to joint tortfeasors. This Court has referred to Charlesworth and Percy on Negligence as to cause of action in regard to joint tortfeasors thus: (Machindranath Kernath Kasar[20], SCC p.212, para 42)
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> > “42. Joint tortfeasors, as per 10th Edn. of Charlesworth & Percy on Negligence, have been described as under:-
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> > > 'Wrongdoers are deemed to be joint tortfeasors, within the meaning of the rule, where the cause of action against each of them is the same, namely, that the same evidence would support an action against them, individually.... Accordingly, they will be jointly liable for a tort which they both commit or for which they are responsible because the law imputes the commission of the same wrongful act to two or more persons at the same time. This occurs in case of (a) agency; (b) vicarious liability; and (c) where a tort is committed in the course of a joint act, whilst pursuing a common purpose agreed between them.'”

11. From the aforementioned rulings of Hon'ble Supreme Court it

is clear that where driver of both vehicles involved in accident are found responsible for accident, then there will be contributory negligence for drivers and if owner, driver and insurer of both vehicles involved in the accident are party to proceedings, Tribunal can apportion the compensation in the ratio of their negligence. Claimant-appellant suffered injuries on account of wrong act of driver of both vehicles. For the occupants of any of the vehicles, it will be case of composite negligence and not of contributory negligence. In case at hand also, claimant was only an occupant of one of the vehicles out of two involved in accident and not driver. Hence, this Court is of the opinion that deduction of 50% of total calculated amount of compensation towards contributory negligence by the Claims Tribunal is not sustainable in law and the same is liable to be set aside. Accordingly, it is hereby set aside.

12. Appellant has placed on record discharge ticket of Sanjeevani Hospital & Research Centre, Bilaspur as Ex.A-45 and a glance of the same would show that appellant suffered fracture of mandible, clavicle, tibia and other grievous injuries on her person. She took treatment as inpatient from 12.10.2010 to 1.11.2010. True it is that appellant failed to prove any permanent disability on her person resulting in loss of earning capacity by producing disability certificate, but from the medical documents placed on record it is apparent that appellant-claimant suffered multiple fractures and grievous injuries on her person. The Claims Tribunal though awarded amount of compensation towards medical expenses, as

proved by producing medical bills, and under other heads, but failed to award amount of compensation towards grievous injuries suffered by claimant-appellant. Looking to nature of injuries as reflecting from Ex.A-45, particularly considering fracture of jaw and clavicle bone, I find it appropriate to award Rs.25,000/- towards grievous injuries to appellant. It is ordered accordingly.

13. For the foregoing reasons, appeal is allowed in part. Now, claimant-appellant shall be entitled for total amount of compensation of Rs.1,07,000/- (82000 + 25000). This amount of compensation shall carry simple interest @ 9% p.a. from the date of filing of claim application till its realization. Respondents No.1 to 3 are jointly and severally liable to satisfy the amount of compensation. Rest of the conditions mentioned in the impugned award shall remain intact. Any amount already paid to claimant-appellant as compensation shall be adjusted from the total amount of compensation as calculated above.

Sd/-
(Part Prateem Sahu)
Judge

roshan/-