

(Proceedings through video conferencing)

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 785 of 2015

- Smt. Jahura Bai, Wd/o Prahalad Das, aged about 60 years,
R/o village Birkona, PS 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 Sameer 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.213/2014 thereby allowed claim application
in part; awarded Rs.12,500/- 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 persons of her village 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 of thigh apart from injuries on her waist, chest, wrist etc. She was immediately taken to District Hospital, Bilaspur for treatment. Thereafter, she was admitted in Dr. Manjhi's Nursing Home, Pathariya. 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.2,85,000/- under different heads as compensation pleading therein that prior to accident, claimant was earning Rs.4,500/- per month by doing work of labourer under the Employment Guarantee Scheme. 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 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 injuries in a motor vehicular accident; driver of both vehicles involved in accident were equally responsible for accident and there was no breach of any condition of insurance policy. While assessing monthly income

of appellant at Rs.3,000/- (Rs. 36,000/- per annum), the Claims Tribunal computed total compensation of Rs.25,000/-, out of which 50% was deducted towards contributory negligence on the part of driver of vehicle in which claimant was travelling and awarded Rs.12,500/- as compensation to claimants.

7. Shri Sameer Singh learned counsel for claimant-appellant would submit that the Claims Tribunal awarded meagre amount of compensation overlooking nature of injuries suffered by claimant-appellant. He submits that the Claims Tribunal has awarded only Rs.5,000/- towards medical expenses; Rs.5,000/- towards mental pain and agony; Rs.5,000/- towards special diet and Rs.10,000/- towards loss of income. The Claims Tribunal has not awarded any amount of compensation towards grievous injuries suffered by appellant-claimant. He further pointed out that the Claims Tribunal erred in deducting 50% of total compensation towards contributory negligence on the part of driver in which appellant was travelling. He submits that as finding of the Claims Tribunal is that accident took place on account of negligence of driver of both the vehicles and appellant was occupant of Tata Magic, therefore, it would be case of composite negligence and not contributory negligence for the occupants of vehicle. Occupant of vehicle cannot be said to have contributed to accident and being so, liability cannot be apportioned. He further submits that driver, owner and insurer of vehicle on which appellant was travelling were not arrayed

as party to claim application and only the owner, driver & insurer of offending vehicle have been arrayed as party to claim application. He submits that victim of motor vehicular accident, who was occupant of one of the vehicles out of two which met accident, can seek compensation from driver, owner & insurer of any of vehicles involved in accident. In support of afore submissions, learned counsel places his reliance on decision of Hon'ble Supreme Court in **T.O. Anthony vs. Karvarnan & ors** reported in **(2008) 3 SCC 748**.

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 appellant 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 Lal¹⁹, the decisions in T.O. Anthony¹⁷ and Hemlatha¹⁸ 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. Mylarappa²⁰ 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 Kasar²⁰, SCC p.212, para 42)

“42. Joint tortfeasors, as per 10th Edn. of Charlesworth & Percy on Negligence, have been described as under:-

'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, there will be contributory negligence for drivers and if driver, owner and insurer of both the vehicles involved in accident are party, Tribunal can apportion 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. So far as submission made by learned counsel for appellant regarding award of meagre amount of compensation is

concerned, perusal of record would show that immediately after accident, claimant-appellant was taken to the Government Hospital, Chakarbhata for MLC where after mentioning nature of injuries, the doctor advised for consultation from Orthopaedic. Appellant has placed on record medical prescription and bills as Ex.A-8 to Ex.A-22 with respect of her treatment and purchase of medicines. Taking into consideration the documents submitted by appellant in support of her claim, I do not find any error on the part of the Claims Tribunal in awarding Rs.5,000/- towards medical expenses. Hence, submission of learned counsel for appellant that Claims Tribunal has not awarded appropriate amount of compensation towards medical expenses is not sustainable and is hereby repelled.

13. Perusal of impugned award would further show that the Claims Tribunal has not awarded any amount of compensation towards injuries suffered by claimant-appellant. From the medical prescription and bills produced by claimant showing purchase of medicines it is clear that she had purchased medicines up to 29.10.2010 based on medical prescription of Dr. Manjhi. From the documents placed on record with regard to treatment and purchase of medicines, it can be presumed that appellant had suffered grievous injuries on her person. Hence, in the opinion of this Court, appellant-claimant is further entitled to Rs.10,000/- towards grievous injuries. It is ordered accordingly. Appellant will also be entitled for the compensation already awarded by the Claims

Tribunal.

14. For the foregoing reasons, appeal is allowed in part. Now, claimant-appellant shall be entitled for total amount of compensation of Rs.35,000/- (25000 + 10000). This amount of compensation shall carry simple interest @ 9% p.a. from the date of filing of claim application till its realization. Rest of the conditions of 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/-