(Proceedings through video conferencing)

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 803 of 2015

- Smt. Usha Dhruv, Wd/o Late Jagdish Dhruv, aged about 27 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 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.235/2014 thereby allowed claim application in part; awarded Rs.14,500/- 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 villagers had gone to Chandrahasini Temple, Chandarpur on Tata Magic vehicle bearing registration number CG10-F-9761 for offering prayer. While returning from Chandarpur, at about 2:30 a.m. of 11.10.2010 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, apart from grievous injuries on her head, face, chin & chest, claimant suffered fracture of right knee. She was immediately taken to District Hospital, Bilaspur for treatment. Thereafter, she was admitted in Samadhan Nursing Home, Bilaspur where she underwent head surgery. 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/- as compensation pleading therein that prior to accident, claimant was posted as Aanganbadi Worker and thereby earning Rs.4,500/- per month. However, due to injuries suffered by her in aforementioned accident, she has become permanently

disabled and unable to work as before. It was also pleaded that she incurred Rs.1,00,000/- in her treatment.

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 in favour of 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 and 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;

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.29,000/-, out of which 50% was deducted towards contributory negligence on the part of driver of vehicle in which claimant was travelling and awarded Rs.14,500/- as compensation.

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 further submits 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 awarded meagre amount of compensation of Rs.4,000/- towards medical expenses; Rs.5,000/- towards pain and sufferings; Rs.5,000/- towards conveyance & special diet; Rs.5,000/- towards attendant and Rs.10,000/- towards loss of income. The Claims Tribunal has not awarded any amount towards grievous injuries suffered by claimant, loss of amenities and joy in life. It is also argued that the Claims Tribunal has not considered medical documents placed on record as Ex.P-9, P-10, P-12 to P-15.

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 claimants-appellants failed to prove income of deceased in accordance with law, assessed income of deceased 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. Claimants-appellants have not arrayed owner, driver & insurer of vehicle of which deceased 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 deceased 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, and claimant-appellant suffered injuries on account of wrong act of driver of both vehicles. For the occupants of any of 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. Claimant can file application for compensation either against any one or both. Claimant chose to file application against driver, owner and insurer of Truck. Hence, this Court is of the opinion that deduction of 50% of total calculated amount of compensation towards contributory negligence by 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 with regard to enhancement of amount of compensation is concerned, perusal of record would show that appellant has placed on record prescription slip of Samadhan Nursing Home of Dr. S.K. Dutta as Ex.P-9 & Ex.P-10. Appellant has also placed on record X-ray report of cervical spine and right leg dated 12.10.2010 (Ex.P-12) wherein it is mentioned that fracture at the mid portion of fibula. CT Scan report of head is filed as Ex.P-14 in which it is mentioned that CT image morphology findings are within normal limits. Apart from

above, there is no other medical document available on record to prove pleadings of appellant that she suffered head injury and underwent surgery. Hence, from the medical documents placed on record, it is apparent that appellant suffered fracture of Fibula bone. The Claims Tribunal has awarded amount of compensation on different heads, but no amount is awarded towards grievous injury of fracture suffered by appellant. Therefore, in addition to compensation awarded by Claims Tribunal, appellant-claimant is also entitled to Rs.10,000/- towards grievous injury suffered by her. 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.39,000/- (29000 + 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 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/-