

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
(CIVIL APPELLATE JURISDICTION)
APPELLATE SIDE**

Present:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

FMAT (MV) 118 of 2024

Cholamandalam MS General Insurance Co.

Versus

Tuhina Khatun & Anr.

For the Appellant Insurance Co. :	Mr. Bikramaditya Ghosh Ms. Supriya Singh Mr. Ved Rai
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For the Respondents	:	Mr. Gobinda Saha Ms. Priyanka Das Mr. Tamal Kumar Sen Mr. Milan Chandra Laskar
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Heard on	:	05.03.2025
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Judgment on	:	07.03.2025
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Dr. Ajoy Kumar Mukherjee , J.:

1. The instant appeal has been preferred by the appellant, being aggrieved by the judgment and award dated 28th February, 2023, passed by Motor Accident Claim Tribunal, Jalpaiguri in MAC case no. 130 of 2016 under section 166 of the Motor Vehicles Act.

2. The fact narrated in the petition of claim for compensation is that the respondent no. 1 herein while proceeding towards her place of work from her residence on 10.03.2016 at about 11.a.m., she boarded a bus bearing no. WB 85-0420 as a passenger. On the way, a truck bearing no. WB 41G 1024 coming from the opposite direction dashed into the said bus wherein the said respondent no. 1 was travelling and for which respondent no. 1 sustained injuries in her person and was taken to Hospital and was under treatment from 10.03.2016 to 25.03.2016, wherein she had to incur a total expenditure of Rs. 3,50,000/- (app.) and as such she claimed compensation of Rs. 4,00,000/- before the Tribunal. The Tribunal below by the impugned judgement awarded a sum of Rs. 2,78,000/- in total along with interest.

3. In the instant appeal the main question which arises for consideration is, whether it is open to the claimant/respondent no.1 to recover entire compensation from the insurer of the Truck bearing no. WB 41G 1024 or the insurer of the Bus bearing no. WB 85-0420, wherein victim boarded and sustained injury, shall also be held liable to pay part of the awarded amount, treating that the accident occurred due to contributory negligence.

4. Before going to further details let me consider the difference between composite negligence and contributory negligence. Needles to say that the question of contributory negligence arises when there has been some sort of negligence which is attributable, on the claimants' part, which resulted the damage caused. Therefore, the concept of contributory negligence is applicable when it is seen that the damage caused due to claimant's

failure to use reasonable care for the safety of either himself or his property, so that he becomes blameworthy in part as an author of his own wrong.

5. On the contrary the concept of composite negligence is completely a different one. While in the case of contributory negligence a person who has himself contributed to the extent, cannot claim compensation for the injuries sustained by him in the accident to the extent of his own negligence, in the case of composite negligence a person who has suffered, has not contributed to the accident but the outcome of combination of negligence of two or more other persons.

6. In case where the injured suffered damages due to composite negligence of two or more vehicles, each wrongdoer is jointly and severally liable to the injured for payment of the entire damages.

7. Supreme Court in ***T.O. Anthony Vs. Karvarnan and others*** reported in **(2008) 3 SCC 748** held that in case of composite negligence, injured need not establish the extent of responsibility of each wrongdoer separately nor is it necessary for the court to determine the extent of liability of each wrongdoer separately. It is only in the case of contributory negligence, that the injured himself has contributed by his negligence in the accident, extent of his negligence is required to be determined as damages recoverable by him in respect of the injuries has to be reduced in proportion to his contributory negligence.

8. It is no more *res integra*, in view of several judicial pronouncements that in case of composite negligence, it is not necessary to apportion the claim, when it is not possible to determine the ratio of negligence of joint

tort-feasors and the claim can be made against one of them, entire amount of compensation on account of injury or death as their liability is joint and several.

9. In view of aforesaid well settled principle of law, let me consider whether the present case comes within the ambit of an accident caused due to contributory negligence or not. After going through the FIR I find that it has been specifically alleged therein that the driver of truck bearing No. W B 41 G 1024 at the relevant time of accident was driving the vehicle in a rash and negligent manner with excessive speed and dashed the bus in which the victim boarded. In the FIR it has also specifically alleged in the last line that due to desperate and reckless driving by the driver of the offending truck, the accident was caused. In the charge sheet also it has been stated that the accident took place due to rash and negligent driving by the driver of truck who alone has been charge-sheeted. The eye witness of the accident namely PW1 has specifically stated in his examination in chief that the accident occurred due to rash and negligent driving on the part of the driver of the offending vehicle bearing no. WB 41 G 1024. In the cross examination he stated both the vehicles are moving face to face and thereafter accident took place. The victim also deposed as PW1 who made the same statement accusing the offending truck for causing the accident

10. From the aforesaid investigation as well as trial I do not find a single piece of evidence to held that the claimant/victim has any sort of contribution in causing accident from which she sustained injury and for which she is entitled to get damages. The materials available in the record,

by no stretch of imagination suggest that the instant case comes within the ambit of an accident caused due to contributory negligence of the claimant.

11. Since the case of contributory negligence fall flat in the fact and circumstances of the present case, even if for the sake of argument if the case in hand is taken to be an accident caused due to composite negligence, then also in view of settled principle of law, since the liability of the tort feasons is joint and several, the claimant is entitled to recover the amount from any of them and there is no necessity to apportion the inter-se liability of joint tort feasons.

12. In view of aforesaid discussion and in the absence of making out any case of contributory negligence, the Tribunal below was not erred in directing petitioner/O.P. No.2/insurer of vehicle bearing registration no. WB 41G 1024, to pay the entire awarded amount to the respondent/claimant.

13. I find no substance in other part of the argument raised by the appellant contending that the insured vehicle was acting in non compliance of section 134(c) of the Motor Vehicles Act or that the driver of the insured vehicle was not carrying a valid licence at the time of accident or that the insured vehicle was planted in the spot of accident. This is because the driving licence of the driver has been marked as exhibit-9 without any objection and as such the question raised by the appellant in connection with validity of driving licence is an after thought. The question of plantation of offending truck or non compliance of section 134(c) of the MV Act also have not been substantiated by any document or evidence. In the instant case the appellant /insurance company did not adduce any

evidence nor they have produced the owner of the offending truck nor they have summoned the driver of the offending truck to substantiate their claim. On the contrary the prompt registration of FIR in the present case falsify aforesaid allegations raised herein by the appellant

14. In view of aforesaid discussion I do not find any merit in the instant appeal.

15. FMAT (MV) 118 of 2024 thus stands dismissed.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Dr. AJOY KUMAR MUKHERJEE, J.)