
(2012) 06 CHH CK 0015
In the Chhattisgarh High Court
Case No : Misc. Appeal (C) No. 1232 of 2011

Pooja Chamecha and Others	Vs	APPELLANT
Manchit Rao Bhasker and Others		RESPONDENT

Date of Decision : 26-06-2012

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2012) 3 CGBCLJ 541

Hon'ble Judges : Rajeev Gupta, C.J.; Nawal Kishore Agarwal, J

Bench : Full Bench

Advocate : Deepak Jain, for the Appellant; N.K. Malviya for Resp. No. 3, for the Respondent

Judgement

Rajeev Gupta, C.J.—This is claimants' appeal for enhancement of the compensation awarded by the Third Additional Motor Accident Claims Tribunal, Bilaspur (for short the Tribunal") vide award dated 15.03.2011, passed in Claim Case No. 102/2010. As against the compensation of Rs. 10,05,000/-, claimed by the appellants/claimants, unfortunate widow, minor children and parents of deceased Dileep Dhamecha by filing a claim petition u/s 166 of the Motor Vehicles Act, for his death in the motor accident on 01.01.2009, the Tribunal awarded a total sum of Rs. 2,81,400/- as compensation along with interest @ 9% per annum from the date of filing of the claim petition till the date of actual payment.

2. The Tribunal on a close scrutiny of the entire evidence led before it held that deceased Dileep Dhamecha died on account of the injuries sustained by him in the motor accident on 01.01.2009; the accident occurred due to rash and negligent driving of the drivers of both the vehicles i.e. Wagon-R, in which the deceased was traveling and the Truck bearing registration No. OR 07/M-2412; the negligence of the drivers of the Wagon-R and the Truck was to the extent of 40%:60%; as the above truck on the date of the accident was insured with the Oriental Insurance Company Limited, and the Insurance Company could not

establish any breach of the policy conditions, the Insurance Company was liable to pay 60% of the compensation assessed to the claimants.

3. The Tribunal assessed the income of the deceased at Rs. 3,000/- per month and Rs. 36,000/- per annum. By deducting 1/4th of Rs. 36,000/- towards the personal expenses of the deceased, the claimants' dependency was assessed at Rs. 27,000/- per annum. By multiplying the annual dependency of Rs. 27,000/- with the multiplier of 17, the compensation was worked out to Rs. 4,59,000/-. By awarding further sum of Rs. 10,000/- under other heads, the Tribunal assessed the total compensation at Rs. 4,69,000/-. As the driver of the Truck was held responsible for the accident to the extent of 60%, the insurer of the Truck was directed to pay 60% of Rs. 4,69,000/- i.e. Rs. 2,81,400/- as compensation to the claimants for the death of deceased Dileep Dhamecha in the motor accident. The Tribunal further directed payment of interest on the above amount of compensation of Rs. 2,81,400/- @ 9% per annum from the date of filing of the claim petition till the date of actual payment.

4. Shri Deepak Jain, learned counsel for the appellants submitted that though the Tribunal has rightly assessed the income of the deceased at Rs. 3,000/- per month and Rs. 36,000/- per annum and the claimants' dependency at Rs. 27,000/- per annum, it has erred in deducting 40% of the compensation assessed holding it to be a case of "Contributory Negligence", whereas In fact, the present is a case of "Composite Negligence", as admittedly deceased Dileep Dhamecha was not driving any of the two vehicles involved in the accident.

5. Shri N. Malviya, learned counsel for respondent No. 3, the Oriental Insurance Company Limited, the insurer of the truck on the other hand supported the award and contended that the compensation Of Rs. 2,81,400/- awarded by the Tribunal is just and proper compensation in the facts and circumstances of the present case.

6. As learned counsel for the appellants has not challenged the assessment of the income of the deceased by the Tribunal at Rs. 3,000/- per month and Rs. 36,000/- per annum and the claimants' dependency at Rs. 27,000/- per annum, we do not deem it necessary to examine these aspects of the matter.

7. Deceased Dileep Dhamecha was one of the two occupants in the Wagon-R, which was being driven at the time of the accident by one Kamal Kumar. The other vehicle truck at the time of the accident was being driven by respondent No. 1 Manchit Rao Bhasker.

8. The Apex Court while outlining the distinction between the cases of "Contributory Negligence" and "Composite Negligence" in the case of T.O. Anthony Vs. Karvarnan and Others, observed in paras 6 and 7:

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 is it 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.

7. Therefore, when two vehicles are involved in an accident, and one of the drivers claims compensation from the other driver alleging negligence, and the other driver denies negligence or claims that the injured claimant himself was negligent, then it becomes necessary to consider whether the injured claimant was negligent and if so, whether he was solely or partly responsible for the accident and the extent of his responsibility, that is, his contributory negligence. Therefore where the injured is himself partly liable, the principle of "composite negligence" will not apply nor if can there be an automatic inference that the negligence was 50:50 as has been assumed in this case. The Tribunal ought to have examined the extent of contributory negligence of the appellant and thereby avoided confusion between composite negligence and contributory negligence. The High Court has failed to correct the said error.

9. In view of the above quoted dictum of the Apex Court in the case of TO Anthony Vs. Karvarnan and others (supra), the finding recorded by the Tribunal holding the present to be a case of "Contributory Negligence" cannot legally be sustained. We, therefore, set aside the above finding recorded by the Tribunal and hold that the present is a case of "Composite Negligence", so far as deceased Dileep Dhamecha is concerned. As in a case of "Composite Negligence", it is the choice of the claimant/claimants to claim the entire amount of compensation from any of the two tort feasons and in the present case the claimants have opted to claim the entire amount of compensation from the driver, owner and insurer of the Truck, the driver, owner and insurer of the Truck are liable to pay the entire amount of Rs. 4,69,000/- assessed by the Tribunal as compensation to the claimants.

10. For the foregoing reasons, the appeal filed by the appellants/claimants for enhancement of the compensation is allowed in part. While maintaining the quantum of compensation of Rs. 4,69,000/- assessed by the Tribunal the finding of "Contributory Negligence" recorded by the Tribunal and the deduction of 40% of compensation on that account are hereby set aside. The claimants are held entitled to get the entire amount of compensation of Rs. 4,69,000/- assessed by

the Tribunal.

11. Respondent No. 3 the Oriental Insurance Company Limited is granted three months' time for depositing the amount of Rs. 1,87,600/- (Rupees one lakh eighty-seven thousand six hundred only) along with interest @ 6% per annum from the date of filing of the claim petition till the date of actual payment, before the claims Tribunal. No order as to costs.