
(2011) 09 CHH CK 0055
In the Chhattisgarh High Court
Case No : Misc. Appeal (C) No. 1113 of 2010

Smt. Savita Soni and Others

APPELLANT

Vs

Benuram and Others

RESPONDENT

Date of Decision : 12-09-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2011) 2 CGBCLJ 118 : (2011) 5 MPHT 30

Hon'ble Judges : Rajeev Gupta, C.J.; Rangnath Chandrakar, J

Bench : Full Bench

Advocate : P.R. Patankar, for the Appellant; Vinod Deshmukh, Advocate for the Respondent No. 3, for the Respondent

Judgement

Rajeev Gupta, C.J.—This is claimants' appeal for enhancement of the compensation awarded by the 7th Additional Motor Accident Claims Tribunal, Durg (for short "the Tribunal") vide award dated 13-7-2010, passed in Claim Case No. 66/2008. As against the compensation of Rs. 30,30,000/- claimed by the appellants/claimants, unfortunate widow and minor children of deceased Gorelal Soni, by filing a claim petition u/s 166 of the Motor Vehicles Act, for his death in the motor accident on 24-4-2008, the Tribunal awarded a total sum of Rs. 2,44,750/- as compensation along with interest @ 7% 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 Gorelal Soni died on account of the injuries sustained by him in the motor accident on 24-4-2008; the riders of both the Motorcycles, i.e., Hero Honda Splendor bearing Registration No. CG-07/LD-4285 on which deceased Gorelal Soni was travelling as a pillion-rider and the other Motorcycle Hero Honda Passion bearing registration No. CG-07/L-2738, were equally responsible for the accident to the extent of 50% each; as the Motorcycle Hero Honda Passion 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 50% of the compensation assessed to the claimants.

3. The Tribunal assessed the income of the deceased at Rs. 4,000/- per month and Rs. 48,000/- per annum. By deducting 1/3rd of Rs. 48,000/- towards the personal expenses of the deceased, the claimants' dependency was assessed at Rs. 32,000/- per annum. By multiplying the annual dependency of Rs. 32,000/- with the multiplier of 15, the compensation was worked out to Rs. 4,80,000/-. By awarding further sum of Rs. 9,500/- under other heads, the Tribunal assessed the total compensation payable to the claimants at Rs. 4,89,500/-. As the Oriental Insurance Company Limited, the insurer of the other Motorcycle Hero Honda Passion was held liable to the extent of 50% of the compensation assessed, the Oriental Insurance Company Limited was directed by the Tribunal to pay Rs. 2,44,750/-, i.e., 50% of Rs. 4,89,500/- as compensation to the claimants. The Tribunal further directed payment of interest on the above amount of compensation of Rs. 2,44,750/- @ 7% per annum from the date of filing of the claim petition till the date of actual payment.

4. Shri P.R. Patankar, learned Counsel for the appellants placing reliance on the dictum of the Apex Court in the case of T.O. Anthony Vs. Karvarnan and Others, submitted that though the Tribunal has rightly assessed the income of the deceased; claimants' dependency; selected the appropriate multiplier; assessed the just and proper compensation of Rs. 4,89,500/-, but it has erred in deducting 50% of the compensation assessed holding it to be a case of "Contributory Negligence" whereas in fact the present case is of "Composite Negligence" where the claimants have the choice to claim the entire amount of compensation from any of the tortfeasor.

5. Shri Vinod Deshmukh, learned Counsel for respondent No. 3, the Oriental Insurance Company Limited, the insurer of the Motorcycle Hero Honda Passion, on the other hand, supported the award and contended that the compensation of Rs. 2,44,750/- awarded by the Tribunal is just and proper compensation.

6. As learned Counsel for the appellants has not challenged the assessment of the income of the deceased; claimants' dependency; multiplier selected; and the assessment of the total compensation of Rs. 4,89,500/- by the Tribunal, we are not examining these aspects of the matter and we will confine to the only submission advanced before us relating, to the finding of "Contributory Negligence" by the Tribunal.

7. Admittedly, deceased Gorelal Soni was a pillion-rider on Hero Honda Splendor Motorcycle, which was being driven by one Duleshawar Prasad. As deceased Gorelal Soni was not driving any of the two Motorcycles involved in the accident, we find sufficient force in the submission of learned Counsel for the appellants that the Tribunal has erred in holding it to be a case of "Contributory Negligence" vis-a-vis deceased Gorelal Soni who was a pillion-rider only.

8. The Apex Court in the case of T.O. Anthony Vs. Karvarnan and others (supra),

while outlining the distinction between the cases of "Contributory Negligence" and "Composite Negligence" 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 for 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 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. Now reverting to the present case, admittedly deceased Gorelal Soni was a pillion-rider in one of the two Motorcycles involved in the accident. In view of the above quoted dictum of the Apex Court in the case of T.O. Anthony Vs. Karvarnan and others (supra), the present would be a case of "Composite Negligence" and not of "Contributory Negligence" as held by the Tribunal. In view of the above quoted dictum of the Apex Court, the claimants have the choice of claiming the entire amount of compensation from the owner, driver and insurer of any of the two vehicles. Since in the present case, the claimants have opted to claim compensation from the insurer, driver and owner of the Hero Honda Passion Motor Cycle bearing Registration No. CG-07/L-2738, the insurer/owner/driver of the above Hero Honda Passion Motorcycle are liable to pay the entire amount of compensation of Rs. 4,89,500/- assessed by the Tribunal.

10. For the foregoing reasons, the appeal filed by the appellants/ claimants is

allowed in part. While maintaining the quantum of compensation of Rs. 4,89,500/- assessed by the Tribunal, the finding "Contributory Negligence" recorded by the Tribunal and thereby deducting the amount of compensation by 50% is hereby set aside.

11. As the Oriental Insurance Company Limited, the insurer of the Hero Honda Passion Motorcycle has already deposited Rs. 2,44,750/- along with interest @ 7% per annum before the Tribunal under the impugned award, their liability, now, is to pay the balance amount of Rs. 2,44,750/-, to the claimants along with interest @ 7% per annum as awarded by the Tribunal.

12. Respondent No. 3 the Oriental Insurance Company Limited is granted three months" time for depositing the balance amount of Rs. 2,44,750/- along with interest due thereon @ 7% per annum from the date of filing of the claim petition till the date of actual payment before the Tribunal. No order as to costs.