

Seeta Patel and Others Vs. Pradeep Kumar Naik and Another

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Court : Chhattisgarh

Decided On : Jul-19-2011

Judge : The Honourable Chief Justice Mr. Rajeev Gupta & N.K. Agarwal

Appeal No. : MA C No 503 of 2007

Appellant : Seeta Patel and Others

Respondent : Pradeep Kumar Naik and Another

Advocate for Pet/Ap. : Shri. Pradhan

Judgement :

(APPEAL UNDER SECTION 173 OF THE MOTOR VEHICLES ACT)

N.K. Agarwal, J.

1. This is claimants' appeal seeking enhancement in the award dated 29.12.2006, passed by the Chief Motor Accident Claims Tribunal, Mahasamund (for short 'the Tribunal') in claim case No. 114/2006.

2. As against Rs. 35,25,000/- claimed by unfortunate wife, minor child and mother and father of deceased Shobharam Patel as compensation for the death of deceased in the motor accident, the Tribunal awarded a total sum of Rs. 3,51,400/- against the respondents holding them jointly and severally responsible for its payment along with interest @ 6 percent per annum from the date of

application till its actual payment.

3. The Tribunal, on a close scrutiny of the evidence led, held : the accident had occurred due to composite negligence of driver of Jeep and driver of unknown Truck, both drivers equally contributed to the cause of accident i.e. each to the extent of 50 percent; insurance company liable for payment of compensation to the claimants; assessed the amount of compensation payable to the claimants at Rs. 6,98,800/- (Rs. 6,94,800/- on account of claimants' dependency + Rs. 4000/- on other heads); deducted 50% of Rs. 6,94,800/- on account of negligence of driver of offending Jeep, and thus awarded Rs. 3,51,400/- as compensation to the claimants along with interest @ 6 percent from the date of application till its actual payment.

4. Shri Pradhan, learned counsel for the appellants would submit : deceased Shobharam Patel was occupant of the car and was not driving the offending Jeep at the time of accident. The accident had occurred due to composite negligence of Jeep driver and driver of unknown Truck, and therefore, deduction of 50 percent from the amount of compensation on account of negligence of driver of offending Jeep is not sustainable in law.

5. On the other hand, Shri Srikumar Agrawal, learned Sr. counsel appearing for respondent No. 2/Insurance Company supported the award impugned and would submit that in the facts and circumstances of the case, amount awarded by the Tribunal is just and reasonable and needs no interference.

6. We have heard the learned counsel appearing for the parties and perused the award impugned.

7. We have perused the copy of policy. Undisputedly, the policy is private Car package policy covering risk of occupant of private Car, and therefore, the Tribunal has not erred in holding respondent/insurance company liable for payment of compensation.

8. The question therefore arises for determination in the instant case is whether the amount of compensation awarded to the claimants can be reduced on the

ground that the driver of the offending Jeep in which deceased Shobharam Patel was traveling as gratuitous passenger was guilty of composite negligence.

9. The law is well settled, in an accident involving two or more vehicles, where a third party (other than the drivers and/or owners of the vehicles involved) claims damages for loss or injuries, 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.

10. The Supreme Court in case of T.O. Anthony v. Karvarnan and others, reported in (2008) 3 SCC 748, has held in para 6 and 7 as under:

(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 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."

11. Now reverting to the facts of the case, the deceased Shobharam Patel was a third party, inasmuch as, Jeep was not being driven by deceased Shobharam at the time of accident. Once it is held that the accident had occurred due to composite negligence of Jeep driver and Truck driver then deceased who was traveling in the said Jeep as a gratuitous passenger cannot be held responsible to the cause of accident and his legal representatives are within their right to claim compensation against any of them. The Tribunal mis-understood the distinction between composite and contributory negligence, and therefore, has fallen in error in deducting 50% amount of compensation on account of alleged negligence of the Jeep driver. Therefore, in the considered opinion of this court, the Tribunal has wrongly deducted 50 percent of amount of compensation towards negligence of Jeep driver and thus has fallen in error in awarding only Rs. 3,51,400/-.

12. For the foregoing reasons, the appeal filed by the claimants for enhancement of the compensation is allowed. The compensation of Rs. 3,51,400/- awarded by the Tribunal is enhanced to Rs. 6,98,800/- (Rs. 6,94,800/- + Rs. 4000/- on other heads). The above amount of compensation shall carry interest @ 6 percent per annum from the date of application till its actual payment. Rest of the conditions mentioned in the award shall remain intact. The award stands modified to the above extent.

13. The respondent No. 2/The New India Insurance Company Limited, is granted three months' time to deposit enhanced amount of compensation before the concerned claims Tribunal. No order as to costs.