

Sunil Kumar Vs. Vimlesh Kumar and Others

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Court : Chhattisgarh

Decided On : Oct-12-2011

Judge : The Honourable Chief Justice Mr. Rajeev Gupta & Rangnath Chandrakar

Appeal No. : Misc Appeal C No 1534 of 2009

Appellant : Sunil Kumar

Respondent : Vimlesh Kumar and Others

Advocate for Def. : Shri. A.K. Athaley

Advocate for Pet/Ap. : Shri. Govind Dewangan

Judgement :

(Appeal under Section 173 of Motor Vehicle Act)

Rajeev Gupta, C.J.

1) This common order shall govern the disposal of M.A.C.Nos.1532/2009 (Sarvind Vs. Vimlesh Kumar and others); 1533/2009 (Kailash Vs. Vimlesh Kumar and others); and 1534/2009 (Sunil Kumar Vs. Vimlesh Kumar and others), which arise out of the same accident dated 08.02.2007.

2) As against the compensation of Rs.7,95,000/-; Rs.7,95,000/-; and Rs.15,55,000/- claimed by appellants/ claimants Sarvind, Kailash and Sunil

Kumar, by filing claim petitions under Section 166 of the Motor Vehicles Act, for the injuries sustained by them in the motor accident on 08.02.2007, the Tribunal awarded a total sum of Rs.45,000/-; Rs.20,000/-; and Rs.20,000/- as compensation to the claimants along with interest @ 8% per annum from the date of filing of the claim petition till the date of actual payment.

3) The Tribunal on a close scrutiny of the entire evidence led before it held that claimants Sarvind, Kailash and Sunil Kumar sustained multiple serious injuries in the motor accident on 08.02.2007; the accident occurred due to rash and negligent driving of the drivers of both the vehicles i.e. Indica Car bearing registration No.CG-04/H-3255, in which the claimants were travelling and the other vehicle Truck bearing Registration No.CG-17-ZC-0130; 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 50% of the compensation assessed to the claimants.

4) The Tribunal considering the number and nature of the injuries proved to have been sustained by claimant Sarvind in the motor accident and the amount proved to have been spent on his treatment, awarded Rs.50,000/- towards permanent disability and Rs.40,000/- towards pain and suffering; attendant; conveyance; special diet; medical expenses; loss of income during the period of treatment; and the other incidental expenses. The Tribunal, thus, assessed the total compensation in the case of claimant Sarvind at Rs.90,000/-.

5) In the case of Kailash, the Tribunal assessed lump-sum of Rs.40,000/- as compensation under all the permissible heads i.e. pain and suffering; attendant; conveyance; special diet; medical expenses; and loss of income during the period of treatment.

6) In the case of Sunil Kumar also the Tribunal assessed lump-sum of Rs.40,000/- as compensation under all the permissible heads i.e. pain and suffering; attendant; conveyance; special diet; medical expenses; and loss of income during the period of treatment.

7) As the driver of the Truck was held liable for the accident to the extent of 50% only, the Tribunal directed the insurer/owner/ driver of the Truck to pay jointly and severally Rs.45,000/-; Rs.20,000/-; and Rs.20,000/-, respectively to claimants Sarvind, Kailash and Sunil Kumar being 50% of the total compensation assessed by the Tribunal Rs.90,000/-; Rs.40,000/-; and Rs.40,000/-, respectively. The Tribunal further directed payment of interest on the above amounts of compensation of Rs.45,000/-; Rs.20,000/-; and Rs.20,000/- @ 8% per annum from the date of filing of the claim petition till the date of actual payment.

8) Shri P.K. Patel and Shri Govind Dewangan, learned counsel for the appellants/ claimants placing reliance on the dictum of the Apex Court in the case of T.O. Anthony Vs. Karvarnan and Others reported in (2008) 3 SCC 748 submitted that the Tribunal has erred in holding it to be a case of 'Contributory Negligence' whereas in fact the present case vis--vis these claimants is a case of 'Composite Negligence' as admittedly none of these three claimants was driving any of the two vehicles involved in the accident. Learned counsel further submitted that the insurer of the Truck as such, is liable to pay the entire amount of compensation of Rs.90,000/-; Rs.40,000/-; and Rs.40,000/- to claimants Sarvind, Kailash and Sunil Kumar.

9) Shri A.K. Athaley, learned counsel for respondent No.3 the Oriental Insurance Company Limited, the insurer of the above Truck involved in the accident, on the other hand, in view of the settled position of law in the dictum of the Apex Court in the case of T.O. Anthony Vs. Karvarnan and Others (supra), could not dispute that the Tribunal has erred in holding the present case to be of 'Contributory Negligence' and thereby deducting 50% of the compensation assessed.

10) Admittedly, the Indica Car in which these three claimants were travelling at the time of the accident was being driven by one Ashok. The other vehicle involved in the accident is Truck which was being driver by respondent No.1 Vimlesh Kumar and the owner whereof was respondent No.2 Smt. Prabha Mishra and the said Truck at the time of the accident was insured with the Oriental Insurance Company Limited.

11) The Apex Court in the case of T.O. Anthony Vs. Karvarnan and Others (Supra), while outlining the fine distinction between the cases of 'Contributory Negligence' and that of '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 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 in correct the said error. "

12) From the factual scenario of the cases, it is apparent that claimants Sarvind, Kailash and Sunil Kumar were occupants of the Indica Car and none of them was driving the said car at the time of the accident. The Tribunal, in our opinion, has fallen into error in holding it to be a case of 'Contributory Negligence' and thereby deducting the compensation assessed by 50%. By setting aside the above finding of 'Contributory Negligence', we hold that the present case is of 'Composite Negligence'. In view of the above quoted dictum of the Apex Court in the case of T.O. Anthony Vs. Karvarnan and Others (Supra), the option is with the claimants to claim compensation from any of the tortfeasor and since in the present case, the claimants opted to claim compensation from the owner, driver and insurer of the Truck, the owner, driver and insurer of the said Truck are liable to pay the entire amount of compensation of Rs.90,000/-; Rs.40,000/-; and Rs.40,000/- assessed by the Tribunal to the claimants Sarvind, Kailash and Sunil Kumar, respectively.

13) For the foregoing reasons, the three appeals, filed by appellants/claimants Sarvind, Kailash and Sunil Kumar are allowed in part. By setting aside the finding of 'Contributory Negligence' recorded by the Tribunal, the owner/ driver/ insurer of the Truck are held liable to pay the entire amount of compensation of Rs.90,000/-; Rs.40,000/-; and Rs.40,000/-, respectively to claimants Sarvind, Kailash and Sunil Kumar.

14) As the insurer of the Truck has already deposited Rs.45,000/-; Rs.20,000/- and Rs.20,000/- along with interest awarded by the Tribunal in satisfaction of the impugned award, the liability of the insurer now is to deposit the balance amount of Rs.45,000/-; Rs.20,000/-; and Rs.20,000/- before the Tribunal in the cases of claimants Sarvind, Kailash and Sunil Kumar.

15) A further sum of Rs.5,000/-; Rs.2,000/-; and Rs.2,000/- is awarded to claimants Sarvind, Kailash and Sunil Kumar towards quantified amount of interest on the balance amount of compensation of Rs.45,000/-; Rs.20,000/-; and Rs.20,000/-.

16) Respondent No.3 the Oriental Insurance Company Limited is granted three months' time for depositing the total sum of Rs.50,000/- (Rupees fifty thousand

only) in the case of claimant Sarvind; Rs.22,000/- (Rupees twenty-two thousand only) in the case of claimant Kailash; andRs.22,000/- (Rupees twenty-two thousand only) in the case of claimant Sunil Kumar before the concerning Claims Tribunal.

17) No order as to costs.

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