2025 INSC 394

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2025
(@Special Leave Petition (C) No.12459 of 2019)

SRIKRISHNA KANTA SINGH ...Appellant(s)

VERSUS

THE ORIENTAL INSURANCE COMPANY LTD. & ORS. ...Respondent(s)

J U D G M E N T

K. VINOD CHANDRAN, J.

Leave granted.

2. A young Block Development Officer[1], riding pillion, met with an accident leading to

[1] "B.D.O."

amputation of both his legs. The injured/claimant filed an application for compensation under Section 166 of the Motor Vehicle Act, 1988. The claimant sought for compensation of ₹16,00,000/- (Rupees Sixteen Lacs only) under various heads. The Tribunal found that the claimant is entitled to a sum of ₹7,50,000/- (Rupees Seven Lacs Fifty Thousand only) and directed the insurer of the offending vehicle to pay an amount of ₹4,50,000/- (Rupees Four Lacs Fifty Thousand only), holding that the driver of the scooter in which the appellant was travelling pillion should have been more cautious. The balance liability of ₹3,00,000/- (Rupees Three Lacs only) was directed to be paid by the owner of the scooter who was also driving the sooter. The insurance company was directed to pay the entire amount and recover the liability of the owner of the scooter, from him.

3. An appeal was unsuccessfully filed from the order of the Tribunal which is impugned in the above appeal. On the question of contributory negligence, the High Court directed a sketch map to be produced and on a perusal of the same, it was found that the vehicles were travelling in opposite directions. Considering the discrepancies in the depositions of the claimant, PW 1 and the two eye-witnesses, PWs 2 and 3, it was held that the accident occurred after the long trailer had almost passed the scooter and there is no head-on-collision as deposed by PW 3. It was held that the driver of the scooter ought to have been more careful since he had a better vision than the trailer driver, especially since the collision occurred at the tail-end of the trailer. It was also found that the scooter driver had only a learners licence which does not entitle him to carry a pillion rider. It was found from the written statement of the

scooter driver/owner that despite disclosing the fact of the scooter driver holding only a learners licence, the claimant had insisted to be carried pillion; which the scooter driver complied with only because the demand was made by a B.D.O. It was found that the B.D.O. had abused his authority and forced the commission of an illegal act by reason of which he has suffered amputation of the legs in an accident involving the scooter on which he had forcefully mounted. The appeal was, thus, dismissed. The concurrent judgments thus found that the negligence on the trailer driver was only partial and the scooter driver too contributed to the accident, by his negligence too.

4. We heard Mr. Kunal Chatterji, learned Counsel appearing for the applicant and Mr. Amit

Kumar Singh, learned Counsel appearing for the Insurance Company.

5. The learned Counsel for the claimant/appellant argued that the compensation was very low considering the injury caused to the claimant who suffered amputation of both his legs. The injury necessitated the victim to always have the help of an attendant to ensure his mobility. The claimant had to purchase prosthetics which were very expensive and also replace it frequently since artificial limbs are susceptible to wear and tear. It is pointed out that the bills for the prosthetics, which had also to be changed periodically, are produced along with an Interlocutory Application in the appeal, along with bills of the attendant. The claimant is entitled to enhanced compensation even in addition to the claim made especially considering the huge

cost incurred for ensuring a semblance of normalcy to his life by the purchase of prosthetics and its continued use. It is also argued that the negligence found on the scooter driver was not on reasonable grounds nor was it supported by any evidence. It was also pointed out that the Tribunal had not granted any interest for the amounts awarded.

6. For the insurer, it was submitted that the Tribunal, has clearly apportioned the liability to compensation based on the finding of contributory negligence, imposing only 60% of the compensation as the insurer's liability. It is pointed out that both the owner of the trailer and owner of the driver of the scooter were deleted before the High Court from the party array. In such circumstances, there could not have been any enhancement of compensation since the liability would also be imposed on the owner of

the scooter. The finding of contributory negligence is based on clear evidence. The scooter driver had only a learners licence, the claimant was aware of it and the accident occurred at the tail end of the trailer. It is argued that there was no proof of negligence of the trailer driver. The subsequent documents produced of medical expenses cannot be looked into.

7. We have seen from the records that the owner of the trailer and owner/driver of the scooter were deleted from the party array in the appeal filed before the High Court. True, if the compensation is enhanced, the liability on the owner/driver of the scooter cannot be directed to be paid by or recovered from the said person, since he is not arrayed as a party in the appeal. However, we have to notice that even in that circumstance 60% of the enhanced liability can very well be directed to be

paid by the insurer of the trailer. We hasten to add that this is only in the context of the contributory negligence, if affirmed by us, and if it is otherwise the claimant would be entitled to recover the entire award amounts from the insurer, who has not chosen to file an appeal from either the order of the Tribunal or the High Court.

8. The accident occurred on 03.11.1999 upon which a First Information Report[2] was registered produced as Annexure P-4. Annexure P-4 clearly indicates that the trailer was found to have been driven rashly and negligently; the owner of which was the 1st respondent before the Tribunal and the insurer, the 3rd respondent. The charge sheet has also been filed which is produced as Annexure P-9. After investigation, the charge sheet clearly found

[2] "F.I.R."

that the accident was caused due to the negligence of the driver of the trailer and arrayed him as the accused. PW 1 who was riding pillion also spoke of the rash and negligent driving of the trailer.

9. It is very pertinent that the insurer had not raised a contention of contributory negligence on the scooter driver in the written statement filed before the Tribunal which is produced as Annexure P-14. There is also no serious challenge to the deposition of PW 1-the victim, as to the manner in which the accident occurred; in cross-examination. There were two eye-witnesses examined as PWs 2 and 3 whose testimonies were disbelieved by the Tribunal on the ground that they were not shown as witnesses in the criminal case. In that context, there was no reason for the High Court to

have laboured to harmonise the deposition of all the three witnesses.

10. The finding of the Tribunal was also that the length of the trailer being very long, the scooter driver should have been more cautious. The High Court has found that since there is no head-on-collision, there has to be some negligence found on the part of the scooter driver also. The High Court also found that the B.D.O. misused his position in coercing the driver/owner of the scooter to take him pillion, despite being aware of the fact that the driver had only a learners licence. We have to immediately notice that such a contention was taken by the owner/driver in the written statement filed, but he never cared to examine himself before the Tribunal. In such circumstance, the High Court ought not to have given any credence to the version of the

owner/driver of the scooter which the claimant had no opportunity to dispute by way of cross-examination.

11. In a motor accident claim, there is no adversarial litigation and it is the preponderance of probabilities which reign supreme in adjudication of the tortious liability flowing from it, as has been held in *Sunita* v. *Rajasthan State Road Transport Corporation*[3]. *Dulcina Fernandes* v. *Joaquim Xavier Cruz*[4] is a case in which the rider, who also carried a pillion, died in an accident involving a pick-up van. There was a contention taken that the claimants who were the legal heirs of the deceased had not cared to examine the pillion rider and hence the version of the respondent in the written statement that the moving scooter had hit the parked pick-up van, was to be

[3] (2020) 13 SCC 486
[4] (2013) 10 SCC 646

accepted. It was found, as in the present case, that the Police had charge-sheeted the driver of the pick-up van which *prima facie* showed negligence of the charge-sheeted accused. Similarly in the present case also, the Police after investigation, charge-sheeted the driver of the trailer finding clear negligence on him, which led to the accident. This has not been controverted by the respondents before the Tribunal by any valid evidence nor even a pleading. In fact, the Tribunal, on a mere imaginative surmise, found that since the scooter collided with the tail-end of the trailer, it can be presumed that the driver of the scooter was not cautious, which in any event is not a finding of negligence.

12. Finding that the driver was not cautious is one thing and finding negligence is quite another thing. *Prima facie*, we are satisfied that the negligence was on the trailer driver as discernible

from the evidence recorded before the Tribunal; standard of proof required being preponderance of probability as has been reiterated in *Mangla Ram* v. *Oriental Insurance Company Limited*[5].

13. Now, we come to the question of whether negligence can be found on the ground of the driver of the scooter having only a learners licence. We have already found that the finding of the High Court that the B.D.O. had exercised his authority to travel pillion, despite being aware of the driver holding only a learners licence, besides being far-fetched is not supported by any evidence. *Sudhir Kumar Rana* v. *Surinder Singh*[6] was a case in which the claimant, a minor of 17[1/2] years, met with an accident while riding a two wheeler, which collided with a mini truck. Holding that ordinarily, negligence

[5] (2018) 5 SCC 656
[6] (2008) 12 SCC 436

is only a question of fact, it was found that when a person drives a vehicle without a licence, he commits an offence, which by itself cannot lead to a finding of negligence, leading to or as regards, the accident. Having found the trailer to be driven rashly and negligently, we do not think that the mere fact that the driver of the scooter had only a learners licence would necessarily lead to a conclusion of contributory negligence on the part of the scooter driver. There can be no negligence found on the scooter driver also by the mere fact that the accident occurred on a collision at the tail-end of a long trailer, when the scooter driver had better visibility; which is a question of fact liable to be proved and not merely presumed.

14. On the above reasoning, we find that that the Tribunal erred in finding contributory negligence of the scooter driver and the High Court

too committed a similar error in affirming it. As we noticed, absolving the scooter owner/driver of the contributory negligence is perfectly valid even without his presence in the present proceedings or in the appeal before the High Court since it does not, at all, prejudice him. The appellant is entitled to compensation from the insurer of the offending vehicle, which is unequivocally found to be the trailer; which is covered by a valid policy as admitted by the respondent-insurance company.

15. Now, we come to the question of compensation payable, which was claimed under different heads. We tabulate the amounts claimed under different heads and those awarded by the Tribunal:

Sr.No.	Different heads	Claim	Awarded
1.	Cost of treatment including cost of transportation.	₹2,00,000 /-	₹1,10,000/-

	Hospital charges, Medicines, etc.		
2.	Artificial limbs (both legs) approx.	₹3,00,000/-	₹1,20,000/-
3.	Permanent disablement	₹4,00,000/-	₹2,00,000/-
4.	Pain and suffering through out life	₹2,00,000 /-	₹2,00,000/-
5.	Physical discomfort & loss of amenities of life.	₹3,00,000 /-	
6.	Cost of one personal attendant through out of life	₹2,00000/-	₹1,20,000/-
	Total	₹16,00,000/-	₹7,50,000/-

16. The learned Counsel appearing for the insurance company had argued that there is no scope for any permanent disablement since the appellant who was a B.D.O., despite the disability, has now been confirmed as an I.A.S. Officer; which is admitted by the learned Counsel for the appellant. However, this contention would only deprive the claim of loss of income but the compensation for permanent disablement definitely has to considered

since it would necessarily lead to loss of life's amenities. It has been proved that the appellant lost both his legs; one from above the knee and the other from below the knee. It is trite that there cannot be separate compensation awarded for permanent disability, physical discomfort and loss of amenities of life. The claim of the appellant is ₹9,00,000/- (Rupees Nine Lacs only) under the separate heads. We are of the opinion that it can be restricted to ₹5,00,000/- (Rupees Five Lacs only) under the common heads of permanent disability, physical discomfort and loss of amenities of life; considering the amputation suffered of both his legs. The cost of medical treatment has been claimed as ₹2,00,000/- (Rupees Two Lacs only). However, the claim petition does not bind the Court in granting just compensation. We are of the opinion that considering the use of prosthetics; which is also subject to wear

and tear, it is only proper that an amount of ₹9,00,000/- (Rupees Nine Lacs only) be granted on a composite basis for both medical treatment and artificial limbs. The cost of a personal attendant, at least for a period of time, has to be allowed at ₹2,00,000/- (Rupees Two Lacs only) as claimed by the appellant. We, hence, are of the opinion that the entire amount of ₹16,00,000/- (Rupees Sixteen Lacs only) has to be awarded as compensation. We arrive at this amount considering that the accident occurred in the year 1999 and the award cannot have reference to the fact situation existing today; 25 years hence. The long delay is compensated by the interest awarded. The quantum awarded is on the peculiar facts and circumstances of this case.

17. The amounts awarded, after deducting ₹25,000/- (Rupees Twenty Five Thousand only) received under Section 140 of the Act shall be

paid to the appellant with 7% simple interest per annum from the date of the award. We direct the insurance company to compute the amounts and intimate the same to the appellant. The appellant shall immediately on receipt of this order intimate his bank account number to which, by RTGS/NEFT transfer, the money shall be deposited at any rate within two months from the date of receipt of this judgment.

18. The appeal stands allowed with the above directions.

19. Pending application(s), if any, shall stand disposed of.

....., J.
[SUDHANSHU DHULIA]

....., J.
[K. VINOD CHANDRAN]

NEW DELHI;
MARCH 25, 2025.