

This is an appeal against the judgment and award dated 22.02.2007, passed by the learned Member of Motor Accident Claims Tribunal Tejpur in MACT Case No. 146/2000 and MACT Case No. 188/2000. Both the MAC case were disposed by the Learned Tribunal by a common judgment.

1. The facts of the case, in brief are that on 04.02.2000, Late, Purna Borah while was driving a bus No. ASA-12-A-0387, the bus collided with a truck bearing registration No. NL-04-A-4171, there was head on collision where by Purna Borah the driver of the bus succumbed to his injuries. Widow of Purna Borah by filing MAC Case No. 146/2000, claimed compensation of Rs. 8, 00000/- from the insurer of the bus as well as driver owner and insurer of the truck. Mother of the deceased Purna Borah filed separate MAC Case No. 188/2000, wherein she alleged that

Lt. Purna Borah was unmarried. However, in her claim petition she stated that Purnima Borah used to reside with her son and due to co-habitation between them two children have born.

2. The insurer of the Mini Bus as well as the insurer of the truck contested the claims. The owner and the driver remained ex-parte. The learned Tribunal held that the accident took place due to fault of both the vehicles and therefore, the insurer of both vehicles i.e. Oriental Insurance Company Ltd and New India Insurance Company Ltd. respectively, are liable to pay compensation to the claimants of Rs. 4,95,400/-only.

3. The appellant herein Oriental Insurance Company Ltd is the insurer of the bus driven by the deceased himself. It is submitted by the learned counsel for the appellant that learned Tribunal find that the deceased was also at fault and his contributory negligence was to the extent of 50% and yet directed to the insurer of the vehicle, driven by the deceased himself to pay compensation to the extent of 50%, which is illegal.

4. In the case of Andhra Pradesh State Road Transport Corporation and Another vs. K. Hemlatha and others (2008) 6 SCC 767, in Para 13 and 14, it was observed as under:-

13. In an accident involving two or more vehicles, where a third party (Other than the drivers and /or owners of the vehicles involve) claims damages for loss or injuries, it is said that compensation is payable in respect of the composite negligence of the drivers of those vehicles. But in respect of such an accident, if the claim is by one of the drivers himself for personal injuries, or by the legal heirs of one of the drivers for loss on account of his death, or by the owner of one of the vehicles in respect of damages to his vehicle, then the issue that arises is not about the composite negligence of all the drivers, but about the contributory negligence of the driver concerned.

14. 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 partly as 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 stands reduced in proportion to his contributory negligence.

5. It is submitted by the learned counsel for the respondent claimants that although there was contributory negligence on the part of the deceased driver the claimants being legal heirs of the deceased were entitled to get compensation under Workmen's Compensation Act and they may be allowed to approach the approp

riate forum.

6. Section 167 of MV Act lays down that when claim arises under Motor Vehicles Act as well as under Workmen's Compensation Act, the person entitled to claim compensation may claim compensation only under either of these Acts and not under both the Acts. Here the claimants had claim compensation from the owner of the vehicle driven by the deceased under Motor Vehicles Act. In view of Section 167 of the Act they are not entitled to claim compensation under Workmen's Compensation Act, that too after laps of so many years of the accident.

7. The claim petition was filed by the claimants under Section 166 of MV Act and under 166 they have to prove for whose fault the accident occurred or who is liable to pay the compensation. Here in this case the deceased himself contributed to the accident to the extent of 50% therefore, the appellant who is insurer of the vehicle driven by the deceased is not liable to pay any compensation. In view of above the direction of the Trial Court that both the insurance companies are liable to pay equally the compensation awarded by the Tribunal is hereby set aside.

8. Only insurer of the truck i.e. New India Insurance Company Ltd. is liable to pay 50% of the compensation awarded by the learned Tribunal which has already been paid by the aforesaid insurer, as submitted. Therefore, this appeal is allowed to the extent that direction of the learned Tribunal that the appellant insurer is also liable to pay the compensation to the extent of 50% is hereby set aside.

9. Return the LCR along with a copy of this judgment.