

(2018) 02 CHH CK 0140

Chhattisgarh High Court

Case No: Miscellaneous Appeal (C) No. 1134 Of 2012

Oriental Insurance Company Ltd.

APPELLANT

Vs

Kasturi And Ors

RESPONDENT

Date of Decision: Feb. 7, 2018

Acts Referred:

- Motor Vehicles Act, 1988 - Section 173
- Code Of Civil Procedure, 1908 - Order 41 Rule 22

Hon'ble Judges: P. Sam Koshy, J

Bench: Single Bench

Advocate: Pallav Mishra, Ratan Pusty, Vipin Tiwari

Final Decision: Allowed

Judgement

P. Sam Koshy, J

1. The present appeal under Section 173 of the Motor Vehicles Act has been filed by the insurance company assailing the award dated

04.09.2012 passed by the 6th Additional Motor Accident Claims Tribunal, Durg (in short, the Tribunal) in Claim Case No.17/2011. Vide the

said impugned award, the Tribunal has awarded a compensation of Rs.7,95,500/- to the claimants along with interest @ 6 percent per annum

from the date of application.

2. The appeal of the insurance company is on three grounds. Firstly, there is an element of contributory negligence which is reflected from the

nature of accident which the Tribunal has not properly appreciated. Secondly, the driver of the offending vehicle did not have a license at the

time of accident and therefore the insurance company should not have been fastened with the liability of indemnifying the owner and lastly the quantum of compensation assessed is on the higher side particularly the income of the deceased was exorbitant and the same deserves to be modified.

3. Counsel for the the respondent-claimant however opposing the the appeal submits that the appeal of the insurance company does not have any substance as there is no evidence led to substantiate their contentions. He further submits that the claimants have also preferred cross appeal under Order 41 Rule 22 CPC seeking enhancement of compensation as the Tribunal has not properly assessed the income of the deceased, the claimants would also be entitled for income towards future prospects.

4. Considering the submissions put forth on either side and on perusal of records, admittedly the insurance company has not led any evidence before the Tribunal. In the absence of any evidence, it cannot be said that any of the contentions which the insurance company has raised in their written submission to have been substantiated or proved before the Tribunal. In view of the same, the findings of the Tribunal in fastening the liability upon the appellant- insurance company does not warrant any interference and the appeal of the insurance company thus being devoid of merit deserves to be and is hereby rejected.

5. So far as cross appeal of the claimants is concerned, the date of accident is January, 2011. Indisputably on the said date even an unskilled labour would had been earning more than Rs.200/- a day which would bring the monthly income at Rs.6000/-. Therefore, this court has no hesitation in assessing the income of the deceased at Rs.6000/- per month. In addition the claimants would also be entitled for 40 percent of the said amount towards future prospects.

6. Accepting Rs.6000/- as monthly income, if 40 percent of it is added towards future prospects, the monthly income would reach to Rs. 8400/- i.e. Rs.1,00,800/-annually of which if 1/4th is deducted towards personal expenses, the amount left would be Rs.75,600/-, which if multiplied by applying the multiplier of 15, the amount would become Rs.11,34,000/-. It is ordered accordingly that the claimants shall be

entitled for loss of dependency of Rs.11,34,000/-. In addition, the claimants shall also be entitled for an additional lump sum compensation of Rs.70,000/-under the conventional head to make the total compensation payable at Rs.12,04,000/- instead of Rs.7,95,500/- as awarded by the Tribunal.

7. The above enhanced amount of compensation shall also carry interest at the same rate as awarded by the Tribunal.

8. Accordingly, the appeal of the appellant-insurance company stands rejected. However, the cross appeal filed by the claimants stands allowed.