

(2018) 02 CHH CK 0207

Chhattisgarh High Court

Case No: Miscellaneous Appeal (C) No. 531 Of 2012

Branch Manager, The Oriental
Insurance Company Limited

APPELLANT

Vs

Janiram Yadav And Ors

RESPONDENT

Date of Decision: Feb. 12, 2018

Acts Referred:

- Motor Vehicles Act, 1988 - Section 166, 173

Hon'ble Judges: P. Sam Koshy, J

Bench: Single Bench

Advocate: Raj Awasthi, Raja Sharma

Final Decision: Allowed/Disposed Of

Judgement

P. Sam Koshy, J

1. Present is an appeal filed by the Insurance Company under Section 173 of the Motor Vehicles Act assailing the award dated 14/11/2011 passed by

the learned Fifth Additional Motor Accident Claims Tribunal, Durg, District Durg (C.G.) in Motor Accident Claim Case No.34/2011.

2. Vide the impugned award, the Tribunal in an injury case under Section 166 of the Motor Vehicles Act has awarded a compensation of Rs.74,777/-

with interest @ 7% per annum from the date of application.

3. The facts of the case in brief is that, the accident occurred on 09/05/2007 between the Truck bearing registration No.CG-06-1085 insured by the

present appellant and a Bus bearing registration No.CG-04-E-0377 owned by the respondent No.3 and driven by the respondent No.2. As a result of

the said accident, the claimant i.e. respondent No.1-Janiram Yadav, the driver of a Truck sustained certain injuries. He had preferred the claim

application under Section 166 of the Motor Vehicles Act which finally stood adjudicated upon vide the impugned award dated 14/11/2011 in Motor

Accident Claim Case No.34/2011.

4. The contention of the counsel for the appellant/Insurance Company is that, the appellant was the insurer of the Bus involved in the accident and the

driver of the said offending Bus - Rajpati Yadav did not have a valid license on the date of the accident. According to him, the license which the driver

was having got expired on 22/03/2003 and was renewed thereafter only on 22/05/2007 i.e. for the intervening period of more than 4 years, there was

no license. In the given circumstances, there appears to be a clear breach of policy condition and thus prayed for suitable modification of the award

and shifting the liability upon the owner and driver exonerating the Insurance Company of its liability.

5. Perusal of the record would show that, the amount of compensation awarded has already been ordered to be deposited by the Insurance Company

as per the order of this Court on 01/08/2012 and which by now must have also been disbursed to the claimant. What is also not in dispute is the fact of

there being a clear breach of policy condition in as much as the driver did not have a valid license on the date of accident.

6. Given the facts and circumstances, this Court is of the opinion that the exclusive liability of payment of compensation fixed upon the Insurance

Company is not proper and justified and it is here that the doctrine of pay and recovery would apply and thus the order stands modified to the extent

that, the amount of compensation shall be paid by the Insurance Company with liberty to recover the same by initiating appropriate recovery

proceedings from the respondent No. 2 & 3 i.e. the driver and owner of the offending Bus.

7. The appeal stands allowed and disposed off.