

(2018) 02 CHH CK 0228

Chhattisgarh High Court**Case No:** Miscellaneous Appeal (C) No. 460, 532 Of 2012

Neelmani Kusum Toppo And Ors

APPELLANT

Vs

Brij Mohan Das Mahant And Ors

RESPONDENT

Date of Decision: Feb. 13, 2018**Acts Referred:**

- Motor Vehicles Act, 1988 - Section 173, 185

Hon'ble Judges: P. Sam Koshy, J**Bench:** Single Bench**Advocate:** Mahavir Bhatnagar, Sanjeev Sahu, Amrito Das, P. Acharya**Final Decision:** Allowed

Judgement

P. Sam Koshy, J

1. These are two appeals under Section 173 of the Motor Vehicles Act against the award dated 28.02.2012 passed by the Additional Motor Accident

Claims Tribunal, Sarangarh, (in short the Tribunal) in Claim Case No.10/2010. Vide the impugned award, the Tribunal has awarded compensation of

Rs.90,000/-along with interest @ 6 percent per annum from the date of application. While passing the impugned award, the Tribunal has exonerated

the insurance company and has fastened the liability upon the owner and driver of the offending vehicle.

2. MAC No. 460 of 20012 has been filed by the owner whereas, MAC No.532 of 2012 has been filed by the claimants seeking enhancement of compensation.

3. So far as owner's appeal is concerned, he has questioned the liability which has been fastened upon it only on the ground that the driver of the

offending vehicle was found to be under the influence of the Alcohol. The contention of the owner is that the insurance company has not been able to establish before the Tribunal by leading cogent evidence that the driver of the offending vehicle was in such a condition that he was not able to drive the vehicle properly. Since reliance has been made on the report of the Station House Officer who has said that from the breath of driver smell of Alcohol was found.

4. According to owner, this itself may not be sufficient to establish any negligence on the part of the driver. Moreover, it was the contention of the owner that even if that be so, the owner is not responsible for the said act of the concerned driver as he has taken proper insurance policy, he is supposed to be indemnified by the insurance company.

5. So far as the claimant's appeal is concerned, the contention of the counsel for the claimants is that the income assessed by the Tribunal is unreasonably low. He submits that considering the period of accident, the income ought to have been assessed more than what has been assessed.

Further, the claimants were also entitled for much more compensation under the other heads than what has been awarded. Further, no compensation towards miscellaneous incidental expenses incurred has been awarded by the Tribunal. Thus, prayed for award to be suitably enhanced.

6. Learned counsel appearing for the insurance company opposes the appeals and submit that there is a categorical finding of the Tribunal that the driver of the offending vehicle was found to have consumed Alcohol at the time of accident. He submits that the report of SHO which has been brought on record also establishes this fact and thus it has to be presumed that the accident has occurred due to rash and negligent driving of the driver who was otherwise under influence of Alcohol.

7. According to insurance company, once there is a finding that the driver of offending vehicle was under the influence of Alcohol, it clearly establishes the breach of policy conditions. Therefore, the insurance company has rightly been exonerated of its liability and prayed for upholding the finding of the Tribunal to that extent.

8. Having heard the counsel on either side and on perusal of records, what is clearly reflected is that there is no document which has been brought on

record by any of the parties which would show the actual condition of the driver. The only document which is available and which has been relied by the Tribunal also is a report of SHO who has only found the smell of Alcohol from the breath of the driver. There is no report to show that the driver was in such a drunken condition that he was not able to drive the vehicle properly. Neither is there any evidence brought on record by any of the parties particularly the insurance company to establish whether the driver was found to have consumed more liquor than the limits which has been prescribed under the provisions of Section 185 of the Motor Vehicles Act while driving the motor vehicles. In the absence of any such cogent evidence before the Tribunal, only because smell of Alcohol was found from the breath of the driver of offending vehicle by itself cannot be presumed that he was in an inebriated condition and was not able to drive the vehicle properly.

9. Under such circumstances, the exoneration of the insurance company does not seem to be proper, legal and justified. The same deserves to be and is hereby set aside. Consequently, MAC No.460 of 2012 filed by the owner is allowed.

10. So far as the appeal of the claimants (MAC No.532 of 2012) is concerned, the assessment of income of Rs.15000/- yearly by the Tribunal is unreasonably low considering the fact that accident is of the year December, 2009. Moreover, the deceased in the instant case was discharging the duties of Kotwar also of the village Jildi, PO Hardi under Tehsil Sarangarh, Distt. Raigarh. Under such circumstances, considering the period of accident, this court has no hesitation in assessing the income of the deceased at Rs.36,000/-annually instead of Rs.15,000/- as assessed by the Tribunal.

11. Thus, accepting Rs.36000/- as yearly income of the deceased, if 1/3rd of it is deducted towards personal expenses, the amount left would be Rs.24,000/- which if multiplied applying the multiplier of 5, the amount comes to Rs.1,20,000/-. It is ordered accordingly that the claimant is entitled for Rs.1,20,000/- for loss of dependency. In addition, the claimant would also be entitled for a lump sum compensation of Rs.50,000/-under conventional heads to make the total compensation payable at Rs.1,70,000/- instead of Rs.90,000/- as awarded by the Tribunal.

12.The above enhanced amount of compensation shall also carry the interest at the rate as quantified in the award.

13.As a consequence, both the appeals filed by the owner as well as claimant stand allowed. The liability of payment of compensation stands shifted upon the insurance company.