

(2018) 02 CHH CK 0441

In the Chhattisgarh High Court

Case No : Miscellaneous Appeal (C) No. 540 Of 2012

Archana Devi Sahu And Ors

APPELLANT

Vs

Oriental Insurance Co. Ltd. And Ors

RESPONDENT

Date of Decision : 28-02-2018

Acts Referred:

Motor Vehicles Act, 1988 — Section 173, 185

Citation : (2018) 02 CHH CK 0441

Hon'ble Judges : P. Sam Koshy, J

Bench : Single Bench

Advocate : RK Jain, Chitra Shrivastava

Final Decision : Allowed/Disposed Of

Judgement

P. Sam Koshy, J

1. The present appeal under Section 173 of the Motor Vehicles Act has been filed by the claimants seeking enhancement of compensation against the

award dated 14.02.2012 passed by the 1st Additional Motor Accident Claims Tribunal, Bilaspur (in short, the Tribunal) in Claim Case No.225/2010.

Vide the said impugned award, the Tribunal in a death case has awarded a compensation of Rs.2,07,000/- after assessing 50 percent of contributory

negligence against the deceased.

2. The brief facts of the case is that Rakesh Kumar Sahu, aged between 28-30 years, on 02.07.2010 when travelling in his motorcycle was hit by a

Truck coming from behind. As a result of the said accident, Rakesh Kumar sustained grievous injuries to which he later succumbed. The legal

representatives of deceased filed a claim application which stood decided vide impugned award.

3. Counsel for the appellant-claimants submits that the finding of contributory negligence is bad in law. It is a case where the deceased was moving on

the left side of the road when he was hit by the Truck from the back side and the finding of contributory negligence does not have any basis. Further,

there was no evidence adduced by the insurance company to prove the contributory negligence nor was there any eyewitness examined to establish

the contributory negligence or at least to show that the deceased was negligent while driving the vehicle which resulted in the accident.

4. The only piece of evidence which is said to have been taken by the Tribunal is of the postmortem report where trace of Alcohol was found from

the body of deceased and secondly that the claimants could not produce the driving license of the deceased. Merely because there were traces of

Alcohol by itself would not lead to assess contributory negligence unless there is evidence that the deceased was driving the vehicle in such an

inebriated condition. Further, it was also to be established from the postmortem that the limit of Alcohol was much more than the prescribed limit as is

specified under Section 185 of the Motor Vehicles Act. Similarly, since the deceased had died in the accident, the possibility of deceased losing his

driving license in the course of accident also cannot be ruled out. Merely because the claimants could not produce the license by itself cannot be a

ground of contributory negligence. Thus, the said finding of contributory negligence is set aside.

5. Coming to the question of compensation, if we consider the income assessed by the Tribunal, this court has no hesitation in holding it to be

unreasonably low. Indisputably the date of accident being July, 2010, the minimum income of an unskilled labour would had been Rs.200/- a day i.e.

6000/- per month. The deceased in the instant case is said to have been working as Mason which is skilled nature of work. This court therefore,

assesses the income of the deceased at Rs.6000/- instead of Rs.3000/- as assessed by the Tribunal and proceeds to quantify the compensation.

Further, the claimants would also be entitled for 40 percent of said amount towards future prospects.

6. Accepting Rs.6000/- as the monthly income, if 40 percent of it is added, the monthly income comes to Rs. 8400/- i.e. 1,08,000/- yearly, of which if

1/3rd is deducted towards personal expenses, the amount left would be Rs.67,200/- which if multiplied by applying the multiplier of 17, the amount

towards loss of dependency would come to Rs.11,42,400/-. In addition, The claimants are also entitled for a lump sum compensation of Rs.70,000/-

towards conventional heads to make the total compensation payable at Rs.12,12,400/-. Thus, it is ordered that the claimants shall now be entitled for a total compensation of Rs.12,12,400/- instead of Rs.2,07,000/- as awarded by the Tribunal.

7. Since the finding of contributory negligence has already been set aside by this court, the claimants are entitled for entire amount of compensation as assessed by this court.

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

9. Accordingly, the appeal of the appellant-claimants stands allowed and disposed of.