

**(2012) 03 CHH CK 0061**  
**In the Chhattisgarh High Court**  
**Case No : M.A. (C) No. 1140 of 2011**

|                             |    |            |
|-----------------------------|----|------------|
| Oriental Insurance Co. Ltd. | Vs | APPELLANT  |
| Smt. Uttara Devi and Others |    | RESPONDENT |

**Date of Decision :** 27-03-2012

**Acts Referred:**

Motor Vehicles Act, 1988 — Section 166, 2(24), 2(34)

**Citation :** (2013) ACJ 1357 : (2012) 2 MPJR 27

**Hon'ble Judges :** I.M. Quddusi, J;Gulam Minhajuddin, J

**Bench :** Full Bench

**Advocate :** Saurabh Sharma, for the Appellant; Mukesh Sharma, Advocate, For Respondents No. 6 and Mr. Badruddin Khan, Advocate For Respondents No. 7, for the Respondent

**Final Decision :** Allowed

## Judgement

Dr. I.M. Quddusi, J.—This appeal has been filed by the appellant -insurance Company against the award dated 26.08.2011 passed by the learned 2nd Additional Motor Accident Claims Tribunal Bilaspur (C G) (for short "the Claims Tribunal") in Claim Case No. 137/2011. Brief facts of the case are that on 09.06.2009 at about 5.00 p.m. the respondent No.6 reversed the truck bearing registration number CG04-J-1411 in a resh and negligent manner and dashed deceased Dwarika Prasad Kashyap, who was at that time working in the Motor Mechanic Garage, Bilaspur, as a result of which he suffered grievous injuries on his body. He was admitted in the CIMS Hospital, Bilaspur where he died while undergoing treatment. The claimants, being the dependents/legal representatives, have filed claim petition u/s 166(1) of the Motor Vehicles Act, 1988 (for short) the Act 1988") seeking compensation to the tune of Rs. 12,86,00/- under various heads.

2. The Claims Tribunal after hearing the parties in the matter and considering the material on record, partly allowed the claim petition of the claimants, awarded a sum of Rs. 4,74,000/- as compensation and fastened the appellant here in with

the liability to pay compensation to the claimants.

3. Learned counsel for the appellant/insurer has contended that the place where the accident had occurred i.e. motor workshop, is not a public place. He has further contended that to attract the provisions of section 166 of the Act, 1988 it is necessary to prove rash and negligence on the part of the driver, but in the instant case the claimants utterly failed to prove negligence on the part of the driver of the vehicle and therefore, the claim application itself was not maintainable. Thus, the appellant insurance. Company cannot be held liable to pay compensation to the claimants.

So far as the quantum part of the impugned award is concerned, it has been argued by the learned counsel that nothing has come on record to show that the parents were dependents upon the deceased rather it is admitted fact that they are earning from the agricultural land owned by them, but the Claims Tribunal treating the parents as dependent on the deceased, has deduced only 1/4th from the income of the deceased towards his personal and living expenses. Therefore, the compensation assessed by the Claims Tribunal is not proper.

4. To appreciate the first contention of learned counsel for the appellant that workshop of the motor vehicles was not a public place," we have to peruse the definition of the "public place" given in Section 2(34) of the Act. 1988 which is quoted as under :-

"public place" means a road, street, way or other place, whether a thoroughfare or not. To which the public have a right of access, and includes any place or stand at which passenger are picked up or set down by a stage carriage;

A bare reading of the above would show that a road, street, way or other place to which the public have a right of access comes within the preview of public place."

5. In the case of National Insurance Co. Ltd. Vs. Sahiba Khatun and Others, , the Hon"ble Supreme Court repelling the contention of learned counsel for the Insurance Company that the accident occurred in the mines area, the premises owned by the Central Coal fields, therefore, the place of accident was not a public place as defined u/s 2(34) to the act, has held that "though the entry is restricted, but the members of public have access on permission. That would not mean that it would cease to a public place, if the accident occurs on such road, the owner and insurer would be liable to pay compensation".

6. In the case of Oriental Fire and General Insurance Co. Ltd. Vs. Raghunath Muduli and Others, , it was held that the road inside the Govt. premises is a public place as the members of public have a right of access to the office. The fact that a permission or pass is required for such entry does not mean that it ceases to be a public case. If any death or injury occurs on road side on account of use of vehicle, then the insurer is liable to pay compensation as the place is a public place.

7. In the matter of Chacko Vs. Mariakutty and Others, . The Division Bench of

High Court of Kerala in paras - 7 & 8 has held as under :-

7 Counsel for the appellant referred us to section 2(24) of the Motor Vehicles Act, which defines a "public place" for the purpose of this enactment. Public place is defined to mean, "a road, street, way or other place, whether a thoroughfare or not, to which the public have a right of access, and includes any place or stand at which passengers are picked up or set down by a stage carriage". He also referred us to number of decisions, Life Insurance Corporation of India Vs. Karthyani and Others, ; Mangalam vs. Express News Papers Ltd., 1982 ACJ (Supp) 203 (Mad.); and Lanka Sarmma Vs. Rajendra Singh and Others, to make out that if entry into a place, though private, is unrestricted as far as the public is concerned, that place may be a public place. It is submitted that accidents occurring in such places, where unrestricted access is available to the public, are liable to be compensated by the insurer.

8. To us, it appears, that the public place is a place to which nobody can deny as matter of right access to the others, or nobody had, as a matter of fact, at the relevant time, or immediately prior there to, sought to exercise the right of denial of access to the others. It is significant that the definition of "public place" in section 2(24) of the Motor Vehicles Act mentions that, even if the place is not a thoroughfare, it may still be a public place, provided the public have got right of access there to. Even though the Tribunal stated that the access to the place of accident was restricted by licence, no evidence did, as a matter of fact, support this assumption. On the other hand, the indications in the evidences of PWs 4 to 6 were to the effect that there were no restrictions. No regulations, nor even any attempt to object to the entry of the public to this place.

8. In the present case also the accident had occurred in a motor workshop where there is no restriction for entry of any person or vehicle. In the evidence also it has come that the driver had entered in the area i.e. workshop where the deceased was working under the instruction of his employer. Therefore, in light of the above, we are of the opinion that the "motor workshop" comes within the definition of "Public place" as defined in Section 2(34) of the Act, 1988 and as such, the first argument advanced by learned counsel for the appellant that the accident had not occurred in a public place has no force.

9. So far as the second argument of learned counsel for the appellant regarding negligence of the driver is concerned. We have perused the record and found that the driver was reversing the vehicle by using reverse gear and in that process the accident had taken place. The driver while reversing the vehicle should have assured himself that no one was behind the vehicle and for that purpose, a cleaner should have been deputed and the absence of Cleaner, the driver should not have reversed the vehicle at least negligently, that is to say, without confirming as to whether any person was standing or sitting on the way therefore, it cannot be said that the driver while reversing the vehicle without any precaution, was not negligent.

10. So far as the quantum part of the impugned award is concerned, on perusal of record. It is found that there were no averments in the claim petition that the parents of the deceased were dependent upon him, therefore, we are of the opinion that they were entitled to get the amount of compensation under the head "loss of estate" only. However, deduction of 1/4th amount from the income of the deceased towards his personal and living expenses, treating the parents also as dependents in the absence of any proof or averments in the claim application was not proper and the Claims Tribunal should have deducted 1/3rd as per decision of the Hon'ble Supreme Court in *Sarla Verma (smt) and others vs. Delhi Transport Corporation* and another reported in (2006) 6 SCC 121 where in the Hon'ble Supreme Court has held that where the number of dependent family members is 2 to 3, one-third (1/3rd) deduction towards personnel & living expenditure of the deceased is to be made. Therefore, we are of the opinion that quantum part of the impugned award needs reconsideration.

11. Therefore, we assess the monthly income of the deceased as Rs. 3,000/- as assessed by the Claims Tribunal, and thus his annual income would be Rs. 36,000/- Since there are three dependents, following the principles laid down in *Sarla Verma's case (supra)*, 1/3rd is deducted from the income of the deceased as his personal and living expenses and as such, the total loss of annual income would come to Rs. 24,000/- (Rs. 36,000/- - 12,000/-) Since the deceased was 29 years of age at the time of accident, a multiplier of 17 is applied to Rs. 24,000/- and accordingly the total loss of dependency is assessed at Rs. 4,08,000/- (24,000/- x 17). Besides this, as the respondent No. 1 - widow had lost her young 29 years old husband, She is entitled to get Rs. 10,000/- towards loss of consortium. The claimants /respondents are also entitled to get Rs. 10,000/- for loss of estate and Rs. 5,000/- for funeral expenses. This in all the respondent No. 1 to 3 are entitled to receive a sum of Rs. 4,33,000/-.

12. In the result, the appeal is allowed in part and the impugned award is modified to the extent that now the claimants shall be entitled to receive a sum of Rs. 4,33,000/- as compensation instead of Rs. 4,74,000/- as compensation instead of Rs. 4,74,000/- as awarded by the Claims Tribunal. The Claimants shall also be entitled for simple interest @ 6% per annum from the date of filing of the claim petition till actual payment is made. Out of the total amount of compensation, a sum of Rs. 2,00,000/- would be deposited in a fixed deposit scheme of a nationalized bank in the name of respondent No.2- minor daughter, and a sum of Rs. 1,00,000/- would be deposited in the name of respondent No. 3- minor son, under the guardianship of respondent No. 1-Mother, for a period of 12 years & 15 years respectively. A sum of Rs. 5,000/- each shall be paid to the parents i.e. respondents No. 4 & 5. Remaining amount shall be paid to the respondent No. 1- Smt. Uttara Devi, widow of the deceased. However, the impugned award so far as it relates to fastening liability on the appellant here in is hereby affirmed. Certified copy as per rules.