

HIGH COURT OF CHHATTISGARH AT BILASPURMAC No. 287 of 2018

National Insurance Company Limited, Through Its Divisional Manager,
Divisional Office, Aakash Ganga Parisar, Supela, Bhilai, District Durg,
Chhattisgarh (Insurer Of Truck No. C.G./08/I/3851).

---Appellant

Versus

1. Smt. Anita Verma Wd/o Late Shri Kaushal Verma, Aged About 26 Years.
2. Digendra Verma S/o Late Shri Kaushal Verma, Aged About 9 months, Minor Through Mother Smt. Anita Verma (Resp.No.1).
3. Smt. Sohaga Verma Wd/o Late Shri Baldau Verma, Aged About 50 Years.
4. Rishi Verma S/o Baldau Verma, Aged About 26 Years.
5. Smt. Phuleshwar Bai Verma Wd/o Late Budhram Verma, Aged About 75 Years.

All are R/o Village Murra, Tahsil Patan, District Durg, Chhattisgarh.

6. Shri Jayant Kumar S/o Shri Shyam Kartik Kanwar, Aged About 47 Years, R/o Village Silhati, Marartola, Tahsil Ambagad Chowki, District Rajnandgaon, Chhattisgarh (Driver Of Truck No. C.G.-08-L-3851).
7. Shri Shantilal Chopra S/o Shri C L Chopra, R/o Beside The Rishi Raj Mangalam, Ganjpara, Tahsil And District Durg, Chhattisgarh (Owner Of Truck No. C.G.-08-L-3851).

---Respondents

For appellant/Insurance Company : Shri Dashrath Gupta, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

16/02/2018

1. Heard on I.A.No.1, which is an application for condonation of delay.
2. Finding the reasons assigned in the said application to be satisfactory,

I.A.No.1 is allowed and delay of 25 days in filing the appeal stands

condoned.

3. Present is an appeal filed by the Insurance Company under Section 173 of the Motor Vehicles Act assailing the award dated 06/10/2017 passed by the learned Fourth Additional Motor Accident Claims Tribunal, Durg (C.G.) in Motor Accident Claim Case No. 549/2016.
4. Vide the impugned award, the Tribunal in a death case under Section 166 of the Motor Vehicles Act has awarded a compensation of Rs.12,93,480/- with interest @ 6% per annum from the date of application.
5. The counsel for the appellant submits that, the Tribunal has not properly appreciated the element of contributory negligence on part of the deceased. Further it was contended that, the quantum of compensation awarded is also on the higher side, particularly, the calculation of future income of 50% while quantifying the compensation so also awarding of Rs.1,05,000/- under the conventional head. He further submits that, for assessing the contributory negligence, the evidence of the driver of the offending vehicle i.e. respondent No.6 has not been properly appreciated by the Tribunal.
6. This contention of the counsel for the appellant may not be acceptable for the reason that, the contributory negligence part cannot be established only on the evidence of the driver of the offending vehicle who otherwise is an accused for the offence under Section 304-A of IPC and against whom a criminal case is already pending. The obvious stand of the driver would always been what he has stated before the Tribunal, otherwise it would prove fatal so far as the criminal case is concerned. Hence, the statement of

the said respondent No.6 – the driver may not be sufficient to establish the contributory negligence part. Thus the said ground stands negated.

7. So far as quantum of compensation is concerned, the Tribunal has considering the facts and evidence which have come on record has assessed the income of the deceased who was a Peon in the Indu Employees Industrial Area, Bhilai which was a permanent nature of employment at Rs.5,502/- which considering the period of accident i.e. of June-2016 cannot under any circumstances held to be either exorbitant or on the higher side so also considering that there were total four claimants, the amount of Rs.1,05,000/- awarded under the conventional head also cannot be said to be either exorbitant or on the higher side.

8. Thus this Court does not find any strong case made out by the counsel for the appellant calling for an interference with the impugned award.

9. The appeal thus fails deserve to be and is accordingly rejected.

Sd/-

(P. Sam Koshy)
JUDGE