

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**C.M No.25251-CII-2015 in/and
F.A.O. No.2319 of 2010
Date of Decision : 01.02.2016**

The National Insurance Co. Ltd.

..... Appellant

Versus

Savita and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. R.C. Kapoor, Advocate
for the non-applicant-appellant.

Mr. Anil Rathee, Advocate
for the applicants-respondents.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

AJAY TEWARI, J. (Oral)

C.M. No.25251-CII-2015

This is an application for early hearing of the main case by the respondents-claimants on the ground that the compensation amount has been stayed.

Learned counsel for the non-applicant-appellant has very fairly stated that he is prepared with the main case and has no objection if the main case is taken up for hearing today itself.

For the reasons recorded, the application is allowed. The appeal is taken up for hearing today itself.

FAO No.2319-2010

This appeal has been filed by the insurance company against the award under Section 163-A of the Motors Vehicle Act.

Brief facts of the case were that the deceased was described as mechanic in a claim petition who met with an accident with an unidentified vehicle while he was driving a motorcycle owned by Dharmender.

The primary contention of the appellant-insurance company is that the deceased was a borrower of the vehicle and hence as per the judgment passed in the case of *Ningamma & another vs. UIICO Ltd., 2009 ACJ 2020* could not be treated to be a third party and therefore the application under Section 163-A of the Act was not maintainable. It is further argued that in view of the averments made in the claim petition the contradictory explanation given by Ramesh Kumar PW2 that he had been asked to do some personal work by Dharmender and that is why Dharmender had given his motorcycle cannot be accepted.

Learned counsel for the respondents-claimants has however argued that there was an innocent mis-statement in the claim petition in so much as the claimants had informed their counsel that the deceased was a Mistri and the word Mistri can be translated both into Mason & Mechanic and this error crept in because the claimants were illiterate people. He has further argued that though in the examination-in-chief Dharmender had stated that Shamsher had borrowed the motorcycle yet in the cross-

examination he had admitted that he had sent the deceased for his personal work.

Learned counsel for the appellant has not been able to counter these arguments.

In these circumstances, I see no reason to take a different view to that taken by the Tribunal.

Appeal is dismissed.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

February 01, 2016

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**(AJAY TEWARI)
JUDGE**