

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

FAO No.2085 of 2011 (O&M).

Date of Decision: 25.02.2016.

Oriental Insurance Company Limited

....Appellant.

VERSUS

Sobha Devi and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mrs. Vandana Malhotra, Advocate for the appellant.

Appeal qua respondent No.1 was dismissed vide order dated
30.09.2013.

None for respondents No.2 and 3.

SNEH PRASHAR, J.

By way of this appeal the appellant-insurance company assailed the award dated 07.12.2010 passed by Motor Accident Claims Tribunal, Narnaul (for short, "the Tribunal") in MACT Case No.135 of 2009 by virtue of which injured-claimant Sobha Devi was awarded compensation to the tune of Rs.19,93,715/- for the injuries suffered in motor vehicular accident.

On 03.01.2009 Smt. Sobha Devi-claimant (respondent No.1

herein), was travelling as a pillion rider on a scooter being driven by her son Sunil Kumar. The scooter was hit by a motorcycle bearing registration No.HR-34B-8540 being driven in a rash, negligent and zigzag manner. As a result of accident Sobha Devi suffered multiple grievous injuries on various parts of the body including spinal-cord and became 100% disabled. She filed a petition invoking the provisions of Section 166 of the Motor Vehicles Act, 1988 claiming compensation from driver, owner and insurer of the motorcycle. The petition was contested by the respondents but rejecting the objections raised by them learned Tribunal partly allowed the petition and awarded compensation to the tune of Rs.19,93,715/- alongwith interest at the rate of 12% per annum from the date of filing of the petition till realization of the award amount. The respondents were held jointly and severally liable for payment of the compensation.

Feeling aggrieved, the appellant-insurance company filed this appeal assailing the award dated 07.12.2010 passed by the Tribunal as illegal, perverse and erroneous.

The submissions made by Mrs. Vandana Malhotra, learned counsel for the appellant have been heard and record perused.

Learned counsel for the appellant argued that there was a delay of 2 months and 16 days in lodging the First Information Report. The claim petition also was not seriously contested by the driver and owner of the motorcycle which proves that there was collusion between them. Learned counsel also contended that the income of the claimant was wrongly assessed as Rs.4000/- per month whereas there was no substantive and

reliable evidence on record to prove that she was independently earning. She was in fact financially dependent on her husband. The compensation of Rs.10 lacs awarded under the non pecuniary/conventional heads is unjustified.

The appellant-insurance company could not produce any evidence during the trial before the Tribunal to controvert the medical documents and disability certificate proved in evidence by the claimant which established that she had suffered permanent disability to the tune of 100% on account of the injuries sustained by her. Perusal of the record shows that on notice issued to claimant-respondent No.1, it was reported that she had died. Since the appellant failed to implead the legal representatives of the deceased claimant-respondent No.1 despite adequate opportunity availed by the appellant, the appeal was dismissed qua claimant (respondent No.1) vide order dated 30.09.2013. As a consequence to dismissal of the appeal against the claimant-respondent No.1, no ground of appeal raised by the appellant survives.

The argument of learned counsel for the appellant that the vehicle in question i.e. the motorcycle which was alleged to have caused the accident, was falsely implicated, was decided against the driver, owner and the appellant-insurer by learned Tribunal. Since the appeal qua claimant-respondent No.1 stands dismissed, there remains no reason to deliberate on the said issue as the findings on that issue in favour of claimant-respondent No.1 stand affirmed. Likewise, the argument of learned counsel for the appellant that the compensation awarded was on the higher side cannot be

gone into as that argument is also repelled by the fact that the appeal against the claimant-respondent No.1 has already been dismissed. Resultantly, there being no merit in the appeal, it is hereby dismissed.

(SNEH PRASHAR)
JUDGE

25.02.2016.
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