

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

FAO No.5424 of 2012

Date of Decision.08.11.2017

Reliance General Insurance Co. Ltd.

.....Appellant

Vs

Santosh and another

.....Respondents

Present: Mr. Arun Sharma, Advocate
for the appellant.

Mr. Pankaj Mehta, Advocate
for the respondents.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J.(ORAL)

C.M. No.24501-CII of 2012

For the reasons stated in the application, delay of 48 days in re-filing the appeal is condoned.

Application is allowed.

C.M. No.24502-CII of 2012

For the reasons stated in the application, delay of 150 days in filing the appeal is condoned.

Application is allowed.

FAO No.5424 of 2012

The appeal has been preferred by the insurance company against the award passed by the Tribunal dated 29.10.2011 whereby a compensation of ₹4,50,800/- has been awarded for death of one Amit @ Aman (hereinafter called as “deceased”), who unfortunately died in a motor accident occurred on 13.4.2008.

Mr. Arun Sharma, learned counsel appearing on behalf of the

insurance company submits that legal representatives of the deceased preferred a claim petition under Section 163-A of the Motor Vehicles Act on the premise that the deceased along with other persons i.e. eye witness PW-2, Sikandar were travelling in a Maruti Car bearing registration No.HR-23/8898 and at about 6 pm when they reached near village Chikanwas, a Haryana Roadways bus coming from Hisar side hit into the car in question. Due to the said impact, the car in question dashed into the offending vehicle bearing registration No.HR-24J/0505 insured with the insurance company, which was coming just behind the bus. In this regard, an FIR bearing No.112 dated 13.4.2008 under Sections 279, 337, 304A IPC was also registered against respondent No.1. The petitioner under Section 163-A in the aforementioned circumstances was not maintainable as it was a case of contributory negligence. The amount of compensation is on the higher side as the multiplier should have been adopted by taking into consideration the age of the claimant and not of the deceased. The proof of registration number of the Haryana Roadways bus is conspicuously absent and the insurance company at the best was liable to satisfy the amount of compensation to the extent of negligence and not for whole. This aspect has not been taken care of, thus, the award passed by the Tribunal is not sustainable and liable to be set aside. In this regard, he has referred to the statement of PW2, Sikandar, who has also reiterated the averments made in the claim petition, thus, the claim petition filed under Section 163-A was liable to be dismissed.

Mr. Mehta, learned counsel appearing on behalf of the claimant submits that appeal of the insurance company is not maintainable as no suggestion or any question has been put to the eye witness regarding the

non involvement of the vehicle insured with the insurance company, therefore, the award cannot be faulted with regard to the liability. The application of multiplier by taking the age of the claimant is no longer a good law as it is the age of the deceased which has to be taken into consideration, thus, urges this Court for dismissal of the appeal.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of learned counsel appearing for the appellant-insurance company. The cross-examination of PW-2, Sikandar Singh conducted on behalf of the insurance company does not remotely contain a suggestion with regard to non-involvement of the vehicle bearing registration No.HR-24J/0505 insured with the insurance company. Having failed to do so, I am of the view that the arguments raised by the appellant are not sustainable, much less, fallacious.

The insurance company has not been able to prove involvement of the vehicle, therefore, cannot get rid of the liability fastened upon it. The application of multiplier of 17 by taking into consideration the age of the deceased is the correct approach and cannot be interfered with. The amount of compensation, in my view, is just and equitable and cannot be tinkered with. No ground for interference is made out. The appeal stands dismissed.

(AMIT RAWAL)
JUDGE

November 08, 2017
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No