

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

FAO No.1662 of 2017 (O & M)

Date of Decision:-10.03.2017

M/s Universal Sompo General Insurance Company Limited

...Appellant

Versus

Rajiv Chauhan and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

Present:- Mr. Pradeep Kumar, Advocate
for the applicant-appellant.

HARI PAL VERMA J.

C.M. No.5470-CII of 2017

This is an application seeking condonation of delay of 54 days
in filing the appeal.

For the reasons mentioned in the application, the same is
allowed and the delay of 54 days in filing the appeal is condoned.

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The appellant-insurance company has filed the present appeal against the award dated 12.9.2016 passed by learned Motor Accident Claims Tribunal, Faridabad, whereby the claim petition of the claimant filed under Section 166 of the Motor Vehicles Act, 1988 was accepted and the award dated 12.9.2016 was passed in favour of the claimant.

Learned counsel for the appellant has argued that the Tribunal has not taken a rational view despite the fact that the Insurance Company has denied the factum of accident as well as the involvement of the offending vehicle. The documentary evidence placed on record, particularly the FIR (Ex.P2) and testimony of respondent No.1/claimant (Ex.PW1/A) have been misread. The Tribunal has not taken into consideration the evidence led by the Insurance Company to rebut the evidence of respondent No.1, particularly the cross-examination of PW1-Rajiv Chauhan, who is author of the FIR. PW1 has stated that he has not witnessed the accident. The deceased was drawing pension, but the learned Tribunal instead of considering the loss of pension of deceased for calculating dependency, has considered the deceased as unskilled worker rendering manual labour for the purposes of calculating loss of dependency. Thus, the Tribunal has caused a grave miscarriage of justice to the appellant-Insurance Company. The income of the deceased Gyan Singh has wrongly been considered despite the fact that the State of Haryana has fixed minimum wages vide Gazette Notification dated 21.10.2015. As per said notification, the minimum wages applicable to an unskilled labour is

Rs.7600/- per month, but the income of the deceased was wrongly considered as Rs.9400/- per month.

I have heard learned counsel for the appellant.

There is no dispute that the deceased Gyan Singh had died in the accident when he was going on his motor-cycle bearing registration No.HR-51J-0349, which was being driven by his son Rajiv Chauhan. When they hardly reached near divider of Sector 12-15 towards BPTP side, a bus bearing registration No.HR-38R-9025 being driven by respondent No.2-Kulwant Kumar in a rash and negligent manner, came and hit the motor-cycle of the deceased. Due to this impact of the accident, deceased fell down on the road and sustained fatal and grievous injuries on all over his body including head. The injuries resulted into his death. As per the contents of the FIR (Ex.P2), the law has been set in motion on the basis of statement of complainant Rajiv Chauhan as the FIR was registered on his information. The deceased was about 59 years of age.

The Tribunal has assessed the income of the deceased as Rs.9400/- per month and after deducting $\frac{1}{2}$ of the income, the monthly dependency has been assessed as Rs.4700/-, which comes to Rs.56,400/- as annual dependency of the claimant. Being 59 years of age of the deceased, the Tribunal has applied multiplier of 9. Thus, the amount has been calculated to Rs.5,07,600/-. The Tribunal has awarded Rs.25,000/- towards funeral expenses. There is no dispute that the vehicle in question was fully insured on the date of accident i.e. 25.5.2015. The insurance company had insured the vehicle w.e.f. 31.3.2015 to 30.3.2016 and the driver was also

holding a valid and effective driving license at the time of accident. Having regard to the age of the deceased and the claim petition filed by the claimant, this Court does not find any illegality in the well reasoned award dated 12.9.2016 passed by the Motor Accident Claims Tribunal, Faridabad.

The appeal is dismissed.

March 10, 2017
Vijay Asija

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No