

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

**FAO No. 5086 of 2017 (O&M)
Date of Decision: October 06, 2017**

The Oriental Insurance Co. Ltd.

..Appellant(s)

Versus

Dev Chandra Choudhari and others

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. S.K. Yadav, Advocate
for the appellant.

ANITA CHAUDHRY, J.

Delay condoned.

This appeal is by the insurance company disputing the amount allowed to the claimants vide award dated 01.04.2017, passed by the Motor Accident Claims Tribunal, Ambala.

A claim petition was filed under Section 163-A of the Motor Vehicles Act, 1988. Seema Devi was travelling in a three-wheeler on 01.03.2016. A car driven by Rajeev Kumar came from the opposite side and hit the footpath and struck against the three-wheeler due to which the cement slab broke and the three-wheeler turned turtle. It was claimed that the deceased was a house-wife and was rendering services, which were worth Rs. 3,300/- per month. The

accident had taken place in 2010. The Tribunal noticed that a DDR had been entered on the statement made by Seema and observed that the accident had occurred while the vehicle was in use and assessed the income of Seema to be Rs. 3,300/- per month and applied the multiplier of 13 and awarded the compensation on the miscellaneous heads as per IIInd Schedule of the Motor Vehicles Act.

The insurance company is in appeal and disputes the finding recorded on issue no.1 as well the income assessed.

The submission on behalf of the appellant-insurance company is that the petition was bad for non-joinder as the insurance company of the three-wheeler should have been impleaded as party and secondly it was a case wherein the three-wheeler driver was at fault. Counsel further submits that in case of non-earning persons, the income could not have been more than Rs.15,000/- per annum. The counsel has relied upon ***Puttamma and others Vs. K.L. Narayana Reddy and another 2014(1) RCR (Civil) 443*** and ***Manju Devi and another Vs. Musafir Paswan & another 2005 ACJ 99***.

I have gone through the authorities referred to by the counsel for the appellant and I find that in both the cases the death was of a child. In the present case, we are not concerned with the death of a child. There is a upper limit for filing a claim under Section 163-A of the Motor Vehicles Act. The claimants had pleaded that the deceased was a house-wife and the income was taken as Rs. 3,300/- per month

and cannot be faulted with. In DDR, Seema had disclosed that the car driver hit the cement slab kept on the divider upon which the cement slab broke and the three-wheeler tyre crossed over the slab and turned turtle. It was only the involvement of the vehicle that was to be proved. The question of negligence was not in issue in the petition filed under Section 163-A of the Motor Vehicles Act.

I find no merit in the appeal and is dismissed in limine.

(ANITA CHAUDHRY)
JUDGE

October 06, 2017

sunil

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No