

118.

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

FAO-543-2017 (O&M)

Date of decision:03.02.2017

ORIENTAL INSURANCE COMPANY LTD ... Appellant

versus

AKASHDEEP SINGH & ORS Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Ashwani Talwar, Advocate,
for the appellant.

HARI PAL VERMA, J.

CM-1763-CII-2017

Prayer in the application filed under Section 5 of the Limitation Act is for condonation of delay of 18 days in filing the appeal.

For the reasons stated in the application, same is allowed and the delay of 18 days in filing the appeal is condoned.

FAO-543-2017

The Oriental Insurance Company Limited has filed the present appeal against the award dated 23.08.2016 passed by MACT, Ludhiana whereby the claim petition filed by the respondents No.1 to 4/claimants under Section 166 of the Motor Vehicles Act was allowed and the appellant-Insurance Company was directed to pay ₹13 lacs as total compensation along with interest @ 6% per annum from the date

of filing of petition till the date of actual payment to the claimants. The payment was required to be paid within three months from the date of the award, failing which, the claimants would be entitled to recover the compensation amount along with interest @ 7.5% per annum through the competent court of law.

Respondents No.1 to 4/claimants filed the claim petition on account of death of Jaswinder Kaur wife of Karamjit Singh, who died due to road side accident.

Briefly stated, on 29.10.2014 at about 5 PM, the deceased-Jaswinder Kaur along with her husband-Karamjit Singh had gone to her parents house at Village Lagria on motorcycle being driven by her husband. The brother-in-law of the deceased, namely, Nirmal Singh was also accompanied on separate bike. When at about 8.30 PM, the deceased along with her husband was coming back to her in-laws in village Tolewal, being followed by Nirmal Singh (brother-in-law) and reached near Dashmesh Mechanical Works, Lagria at about 9 PM, a Bolero car bearing registration No.PB-13-AB-8949, being driven by Jaswinder Singh, came from Malerkotla side, without blowing any horn or indicator, turned his car from right i.e. towards Dashmesh Mechanical Works side, due to which, the deceased and her husband fell down and suffered multiple grievous injuries on their body. The driver ran away from the spot. The deceased and her husband were taken to Civil Hospital, Amargarh, where the husband of the deceased died before reaching the hospital and the deceased-Jaswinder Kaur was

referred to Rajindra Hospital, Patiala, where she also died.

From the pleadings of the parties, the learned Tribunal framed the following issues:-

- “1. Whether Jaswinder Kaur wife of Karamjit Singh died in a motor vehicle accident, which took place on 30.10.2014 due to rash and negligent driving of the offending vehicle bearing registration no.PB-13-AB-8949, which was being driven by the respondent no.1 Jaswinder Singh, owned by respondent no.2 Sarabjit Singh and insured with respondent no.3? If so, its effect? OPA.*
- 2. If issue no.1 is proved, whether the claimants are entitled to compensation? If so, to what extent and from which of the respondent? OPA*
- 3. Whether the claim petition is maintainable in the present form? OPA.*
- 4. Whether the claimants are estopped by their own act and conduct from filing the present petition? OPR.*
- 5. Relief.”*

On the basis of evidence so led by the parties, learned Tribunal has passed the impugned award. It was held that the driver was having a valid and effective driving licence at the time of alleged accident. The registration certificate of the vehicle involved in the accident has also been proved. The appellant-Insurance Company has issued a policy valid from 24.06.2014 to 23.06.2015 and the said insurance policy has also been proved on record as Ex.C4 as well as Ex.R3.

The Tribunal observed that the contribution made by wife to the house is invaluable and cannot be computed in terms of money. She takes care of all the requirements of husband and children including cooking of food, washing of clothes etc. and she teaches

small children and provides invaluable guidance to them for their future life. It is virtually impossible to measure in terms of money the loss of personal care and attention suffered by the husband and children on the death of the housewife and, therefore, the dependents are entitled to adequate compensation in view of loss of gratuitous services rendered by the deceased. It has been held by the Hon'ble Apex Court in *Arun Kumar Aggarwal Versus National Insurance Company Limited-2010(3) RCR (Civil) 827* that in the absence of any definite criteria for determination of compensation payable to the dependents of a non-earning housewife-mother, it would be reasonable to rely upon the criteria specified in clause 6 of IInd Schedule and then apply appropriate multiplier. Accordingly, the income of the deceased was assessed ₹5,000/- per month by applying clause 6 of IInd Schedule and considering the age of the deceased, multiplier of 16 was applied. Accordingly, a total compensation of ₹13 lacs was awarded vide order dated 23.08.2016 by the Tribunal.

Aggrieved against the aforesaid award dated 23.08.2016, the appellant-Insurance Company has filed the present appeal.

Learned counsel for the appellant-Insurance Company has argued that the compensation awarded to the claimants is highly excessive and is not in accordance with law. There is no evidence with regard to deceased's profession and income and in the absence of the same, the learned Tribunal has taken the income as ₹5,000/- per month on account of gratuitous job of housewife. The Tribunal has taken the

age of the deceased as 32 years on the basis of postmortem report and has accordingly, applied 16 as the multiplier, whereas as per the document Annexure A-1 i.e. Adhar Card issued by the Unique Identification Authority of India, the year of birth of the deceased-Jaswinder Kaur is 1976. Therefore, the multiplier has wrongly been applied.

I have heard learned counsel for the appellant.

The document Annexure A-1 which is an Adhar Card was never an evidence available with the Tribunal. Even otherwise, the Adhar Card cannot be the only basis to prove the age of the deceased. The very object of issuing Adhar Card is unique identification and it is not a conclusive evidence of date of birth. Moreover, while conducting the postmortem of the deceased-Jaswinder Kaur, her age has been written as 32 years. The Tribunal has rightly taken into consideration the age of the deceased as mentioned in the postmortem report. It is but presumed that the doctor who conducted the postmortem of the deceased must have noticed the age vis-a-vis her bodily structure. Therefore, this Court does not find any illegality in the award passed by the Tribunal.

Accordingly, the appeal stands dismissed.

(HARI PAL VERMA)
JUDGE

03.02.2017

sanjeev

Whether speaking/reasoned? Yes/No
Whether reportable? Yes/No