

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

FAO-6340-2012 (O&M)
Date of Decision: 20.07.2018

Reliance General Insurance Company Ltd.Appellant

Versus

Sushil Kumar and othersRespondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. T.K. Joshi, Advocate
for the appellant.

Mr. Tara Chand Dhanwal, Advocate
for respondents No.1 to 4.

DEEPAK SIBAL, J. (ORAL)

The insurance company has instituted the present appeal to challenge therein the award dated 20.07.2012 passed by the Motor Accident Claims Tribunal, Bhiwani (for short 'the Tribunal').

The only issue raised by the learned counsel for the appellant is with regard to the assessment of compensation after determining the age of the deceased to be 45 years. According to learned counsel for the appellant once the age of respondent No.2, who is the son of the deceased, is stated to be 39 years at the time of filing of the claim petition, which was two years after the accident, the age of the deceased could not be 45 years.

A perusal of the evidence, which was led before the Tribunal, shows that in the FIR (Ex P-1) which was lodged with regard to the accident and the Postmortem Report of the deceased (Ex P-2), she is stated therein to be about 45 years of age. In addition thereto, PW-1 Rajesh who was the relative of the deceased, had categorically stated in his examination-in-chief that the age of the deceased was 45 years. Neither did the appellant-Insurance Company question the documents Exhibit P-1 and Exhibit P-2 nor did they even put a suggestion to PW-1 Rajesh, with regard to the age of the deceased.

Even in the written statement filed by the appellant-Insurance Company, no specific denial is found to the averment made in the claim petition that the deceased was 45 years of age. That being so, the above plea raised by learned counsel for the Insurance Company, cannot be allowed to be raised in an appeal for the first time, especially without any application moved by them for additional evidence corroborating their pleas.

Though learned counsel for the respondents, in response to the arguments of learned counsel for the appellant, has submitted that respondent No.2 was in fact the step son of the deceased, in view of the above, nothing is being commented on this issue.

In the absence of any evidence in this regard led by the appellant before the Tribunal, no fault can be found in the award given by the Tribunal after determining the age of the deceased to be 45 years. Even before this Court, as observed earlier, nothing except a bald statement had been made by learned counsel for the appellant that the age of the deceased cannot be taken to be 45 years. Without any evidence to support such plea, the entire matter cannot be reopened.

Dismissed.

20.07.2018

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**(DEEPAK SIBAL)
JUDGE**

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No