

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

**CM No.14590-CII of 2015 in/and
FAO No.4658 of 2015
Date of decision: 23.01.2018**

Sulakshna Aggarwal

....Appellant

Versus

Tarun Aggarwal and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Rajesh Gupta, Advocate,
for the appellant.

Ms. Tanvi Jain, Advocate,
for Mr. Sachin Gupta, Advocate,
for respondent No.1.

Mr. R.C. Kapoor, Advocate,
for respondent No.2-Insurance Company.

RITU BAHRI J. (Oral)

This appeal has been filed by the claimant-appellant seeking enhancement of compensation awarded by Motor Accident Claims Tribunal, Patiala (hereinafter referred to as 'the Tribunal') vide award dated 12.01.2011 on account of death of Anand Parkash Aggarwal in a motor vehicular accident which took place on 11.04.2008. Appellant is wife and respondent Nos.3 to 6 are children of deceased Anand Parkash Aggarwal. The impugned award has been passed in a claim petition filed under Section 163-A of the Motor Vehicle Act (for short 'the Act')

Heard, counsel for the parties.

Vide order dated 25.04.2014 passed by this Court in New India

Assurance Co. Ltd. Vs. Sulakshna Aggarwal and others, FAO N.3344 of 2011 (Annexure A-1), appeal filed by the Insurance Company against the impugned award dated 12.01.2011, has been dismissed. In that judgment, it has been observed that where the income of deceased was more than Rs.40,000/- per annum, a claim petition under Section 163-A of the Act was not maintainable and the claimant(s) should have filed a petition under Section 166 of the Act.

In the facts of the present case, deceased-Anand Parkash Aggarwal was a pillion rider and he had died on account of faulty driving by the driver, who was driving the said motorcycle. Vide impugned award dated 12.01.2011, dependency of the claimants was assessed as Rs.1,20,000/-. In addition to this, Rs.2,81,000/- were awarded on account of treatment of the deceased, Rs.10,000/- on account of funeral expenses and Rs.10,000/- on account of conveyance chases of the deceased. Accordingly, total compensation of Rs.4,21,000/- was awarded in favour of the claimants.

After going through the impugned award, this Court is of the view that dependency of the claimant(s) has been assessed on the lower side, as the deceased was 65 years of age. He had retired as a bank Manager and was doing some business at the time of accident/death. Keeping in view that his income was more than Rs.40,000/- per annum, an opportunity should have been provided to the claimant-appellant to file a claim petition under Section 166 of the Act. Moreover, there is a delay of 1427 days in filing of the present appeal.

At this stage, learned counsel for applicant-appellant seeks to withdraw this petition with liberty to file a fresh petition under Section 166

of the Act before the Tribunal.

Learned counsel for the insurance company-respondent No.2 while referring to the judgment passed by Hon'ble the Supreme Court in **Prakash and another Vs. Managing Director, K.S.R.T.C. and others**, 2000 ACJ 954, contends that such a long delay in filing of the appeal should not be condoned.

However, the aforesaid judgment referred to by learned counsel for the insurance company is not applicable to the facts of the present case.

At this stage, reference can be taken to a Division Bench judgment of this Court in **Oriental Insurance Co. Ltd. Vs. Ramesh and others**, 2008 ACJ 15, where a widower had filed a claim petition after the delay of six years of the accident. It was held that the factum of accident could not be denied, as the FIR was recorded immediately after the accident. Further, in **Pawan Kumar Vs. Surjit Kaur and others**, 2008 (1) RCR (Civil) 60, this Court had condoned the delay of 1528 days in filing of the appeal.

In the present case rights of a widow (appellant) are involved. In view of the peculiar facts and circumstances of the case and the law laid down in the aforesaid authorities, delay of 1427 days in filing of the appeal is condoned and claimant-appellant is permitted to withdraw this appeal with liberty to file a claim petition before the Tribunal under Section 166 of the Act, within a period of 30 days from the date of receipt of certified copy of this order.

Dismissed as withdrawn with liberty aforesaid.

(RITU BAHRI)
JUDGE

23.01.2018
ajp

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No