

FAO No. 6201 of 2017 (O&M)

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

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**FAO No. 6201 of 2017 (O&M)
Date of Decision : 16.2.2018**

NEW INDIA ASSURANCE COMPANY LTD APPELLANT

VS

SANTOSH AND OTHERS RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AJAY TEWARI

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

AJAY TEWARI, J.(Oral)

CM-20008-CII-2017

This is an application for condonation of 45 days delay in filing the appeal.

For the reasons recorded in the application, the same is allowed and delay of 45 days in filing the appeal is condoned.

Main Case

This appeal has been filed by the insurance Company against the award dated 30.5.2017 awarding compensation of Rs.10,34,362/- arising out of the death of Rati Ram who was stated to be a driver with respondent No. 6 and died while doing his duty on 1.10.2015. The Tribunal accepted the claim and held that the age of the deceased as 50 years and awarded the amount as mentioned above. Learned counsel

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has argued that firstly the Tribunal erred in taking the age of the deceased as 50 years. As per him, the doctor conducted the postmortem and given his opinion that the age of the deceased was 56 years. Moreover, the claimant (widow) when she appeared in her evidence has stated that she was 50 years old and her husband was about five years older than her. However, I find that the Commissioner had based the age of the deceased as mentioned on the driving license as per which he was 50 years old. Learned counsel has argued that the appellant had placed on record verification report of driving license as per which the driving license was fake. He has however admitted that the report had merely been placed on record and nobody proved it. In the circumstances, the issue before me is whether the Commissioner erred in taking the age as per that mentioned in the driving license or whether he should have accepted the opinion of doctor and statement of claimant. In my opinion, the Commissioner did not commit any illegality accepting the age as per the driving license. The opinion of the doctor is, just that, an opinion. With regard to the statement made by the widow who was an illiterate villager the Court can take judicial notice of the fact that many people who are illiterate have no idea at all about their age. In view of the driving license which was not proved to be fake the Commissioner cannot be said to have erred in taking the age as 50 years. The second argument of the learned counsel is that income of Rs. 8,000/- per month which was taken by the Commissioner was excessive since respondent No.6 had stated that he was paying him Rs.

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7,000/- per month. Even on this score we have two versions, one version of the claimant who claimed that his husband was getting Rs.10,000/- per month and second version of the respondent No.6, her adversary, who stated that he was paying Rs. 7,000/- per month.

In view of the facts and circumstances of the case, no fault can be found in the finding of the Commissioner taking the salary as Rs.8,000/- per month. Even otherwise income of Rs.8,000/- per month for a driver in the year 2015 cannot be said to be excessive.

Resultantly, the appeal stands dismissed.

Since the main case has been decided, the pending C.M, if any, also stand disposed of.

16.2.2018
anuradha

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned	-	Yes/No
Whether reportable	-	Yes/No