

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

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FAO No.452 of 2017 (O&M)

Date of decision: 19.12.2022

Smt.Umaro Devi and another

....Appellants

Versus

Tajinder Singh Cheema and another

....Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.S.S.Mor, Advocate for the appellants.

H.S.Madaan, J.(Oral)

CM No.1468-CII of 2017

Appeal has been filed by delay of 138 days and an application under Section 5 of the Limitation Act for condonation of delay has been filed contending that such delay was not intentional and willful. The application is opposed by learned counsel for respondent No.2 but in the interest of justice, delay stands condoned.

Main Appeal

Sh.R.S.Sharma, Advocate has accepted notice in the main appeal.

Briefly stated facts of the case are that on 06.06.2015 Sukhwinder Singh deceased was going from Kurukshetra to Ladwa in a car bearing registration No.HR-05AF-6457. Ankit son of Ramesh, Abhishek son of Ashok and Sahil son of Salinder were other occupants of the car, which was being driven by Narinder Kumar in a proper manner observing

the traffic rules of road. At about 3.30 p.m. when the car reached near village Mathana, then a truck trailer suddenly came in front of the car. Narinder Kumar turned the car to the other side of the road to avoid the collision in the process, he lost control. Resultantly, the car fell into ditches on the road side and over turned. All the occupants of the car suffered injuries and they were removed to Hospital and subsequently Sukhwinder Singh succumbed to the injuries suffered by him in the accident at PGI Chandigarh where he had been referred to. Parents of the deceased, namely, mother Smt.Umaro Devi and father Sh.Balwant Singh had brought a claim petition under Section 163 of the Motor Vehicle Act, 1988 against Tajinder Singh Cheema owner and The New India Assurance Company Kurukshetra insurer of the ill-fated car bearing registration No.HR-05AF-6457.

Notice of the claim petition was given to the respondents, who put in appearance through counsel and filed written replies. Issues on merits were framed. Parties in support of their case led evidence. On conclusion of trial, the Motor Accident Claims Tribunal, Kurukshetra vide award dated 22.04.2016 accepted the claim petition and granted compensation of ₹4,39,400/- alongwith interest @ 9% p.a. from the date of filing of the claim petition till actual date of realisation besides costs of the claim petition.

The claimants are not satisfied with the amount of compensation awarded to them and they have approached this Court by way of filing of appeal. This appeal was filed belatedly and an application under Section 5 of the Limitation Act was moved for condonation of such delay notice of which was given to the respondent-Insurance Company, who put in appearance through counsel. Delay has since been condoned and the

appeal is being decided on merits.

After hearing learned counsel for the parties and going through the record, I find that in terms of Section 164 of the Motor Vehicle Act, 1988 in case of death of a person in a motor vehicular accident, owner of the motor vehicle or the authorised insurer shall be liable to pay a compensation of ₹5 lacs. It has been clarified that this is notwithstanding anything contained in this or any other Act for the time being in force though by considering the structured Formula provided under Section 163-A of the Act. The compensation in this case has been worked out to be ₹4,39,400 but in view of Section 164 of the Act, compensation of ₹5 lacs deserves to be granted. This position of law has not been disputed by learned counsel for respondent No.2, therefore, the appeal is partly allowed and the impugned award is modified. Resultantly, compensation of ₹5 lacs is granted to the claimants with interest @ 9% p.a. from the date of filing of the claim petition till actual realisation. The appeal is allowed with costs and the amount of cost would be apportioned amongst the claimants in the same ratio as has been directed by the Tribunal in the impugned award.

19.12.2022

Meenu

(H.S.Madaan)
Judge

Whether speaking/non speaking

: Yes/no

Whether reportable

: Yes/No