

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

FAO No. 798 of 2023 (O&M)

Date of decision: 17.02.2023

The Oriental Insurance Co. Ltd.

..... Appellant.

Versus

Smt. Shakuntla Devi and others

..... Respondents.

CORAM: HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL

Present:- Ms. Deepa Jain, Advocate, for the appellant.

ANUPINDER SINGH GREWAL, J. (ORAL)

CM No. 3078-CII of 2023

This application is for condonation of delay of 5 days in filing the appeal.

Heard. For the reasons stated in the application, the same is allowed and the delay of 5 days in filing the appeal is condoned.

FAO No. 798 of 2023 (O&M)

The appellant has challenged the Award dated 02.11.2022 passed by the Motor Accidents Claims Tribunal, Fatehabad ('Tribunal' - for short), whereby a compensation of ₹16,86,760/- along with interest @ ₹7.5% per annum from the date of filing of the petition till the date of final payment, has been awarded to respondents No.1 and 2 on account of death of the deceased.

Learned counsel for the appellant submits that the case of rash and negligent driving is not made out, especially when charges were framed

against the driver of the offending vehicle under Section 304 IPC and he had faced trial accordingly. She further submits that the income of the deceased has been assessed on the higher side. The minimum wages at the relevant time were ₹8,500/- per month while wages were assessed at ₹10,690/-.

Heard.

The deceased met with an accident while driving a Honda motorcycle. The motorcycle is stated to have been hit by a truck. The FIR initially had been lodged under Section 304-A IPC due to rash and negligent driving, but later offence under Section 304 IPC had been added. The accused (driver) was acquitted at the conclusion of the trial. Merely because he had been charged and tried under Section 304 IPC cannot be a pointer to the accident not having taken place due to rash and negligent driving. The FIR had been promptly lodged under Section 304-A IPC and cogent evidence had been adduced before the Tribunal to indicate that the accident had taken place due to rash and negligent driving. The statement of eyewitness, namely, Kapil Dev (PW3) has also supported the version of the claimants that the accident had taken place due to rash and negligent driving on the part of the offending vehicle, which was insured with the appellant-Company. He has categorically deposed that the driver of the offending vehicle while coming from the opposite direction at a very high speed in a zig-zag manner without adhering to the traffic rules hit the motorcycle on extreme wrong side of the road. The appellant had not been able to rebut the evidence led by the claimants.

Insofar as the assessment of the income of the deceased is concerned, the Tribunal has noticed that he was engaged in property dealing,

but no documentary evidence had been placed on record with regard to his income. The income of the deceased has been assessed as ₹10,690/- in view of the minimum wages. It is stated in the claim petition that the deceased was 23 years of age and was working as a property dealer at Fatehabad and other places and earning ₹5-6 lakh per annum. However, no documentary evidence was placed on record. The schedule of minimum wages had not been placed on record by the appellant before the Tribunal. The income which has been assessed at ₹10,690/- per month cannot be said to be excessive as the deceased was an able bodied person of 23 years. Therefore, I do not find any infirmity in the impugned Award passed by the Tribunal.

Consequently, the appeal stands dismissed.

Pending application(s), if any, shall also stand disposed of accordingly.

(ANUPINDER SINGH GREWAL)
JUDGE

17.02.2023
Ramesh

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