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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 25.08.2023

+ **MAC.APP. 93/2023**

**CHOLAMANDALAM MS GENERAL INSURANCE CO.
LTD** Appellant

Through: **Mr.Pankaj Gupta & Ms.Suman
Bagga, Advs.**

versus

SHUBHAM SAPEHIA AND ORS. Respondents

Through: **Mr.S.N. Parashar, Adv. for the
respondent nos. 1 and 2.**

**CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA**

NAVIN CHAWLA, J. (ORAL)

CM APPL. 8002/2023

1. For the reasons stated in the application, the delay of 82 days in filing of the appeal is condoned.
2. The application stands disposed of.

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3. This appeal has been filed by the appellant challenging the Award dated 29.07.2022 (hereinafter referred to as the 'Impugned Award') passed by the learned Motor Accidents Claims Tribunal-02,

Signature Not Verified West District, Dwarka Courts, New Delhi (hereinafter referred

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to as the 'Tribunal') in MACT Case no.843/2017, titled ***Shubham Sapehia & Anr. v. Jafar Hussain & Anr.***

4. The grievance of the appellant against the Impugned Award is that the deceased was travelling in a Wagon-R car bearing no. DL-9C-P-9445 from Jaipur, Rajasthan, to Delhi when the said car met with an accident with a Tata Open Body truck bearing registration no. RJ-14-GG-4539. The learned counsel for the appellant submits that the vehicle/car in which the deceased was travelling was itself being driven in a rash and negligent manner by the husband of the deceased-late Sh.Harjeet Singh, who has also unfortunately died in the said accident.

5. The learned counsel for the appellant submits that as the vehicle was being driven by the husband of the deceased in a rash and negligent manner, the compensation payable to the respondent nos.1 and 2/claimants should have been reduced by the learned Tribunal on account of the contributory negligence of the husband of the deceased in causing the accident.

6. The learned counsel for the respondent nos.1 and 2, who appears on advance notice, submits that even assuming, though not admitting, that the vehicle was being driven by the husband of the deceased in a rash and negligent manner resulting in the accident in question, it cannot be said that the deceased had in any manner contributed to such accident. Therefore, there is no reason for making any deduction on account of contributory negligence as far as the compensation payable to the respondent nos.1 and 2 for the death of the deceased is concerned.



7. I find merit in the submission made by the learned counsel for the respondent nos.1 and 2. It is not the case of the appellant that the deceased had in any manner contributed to the accident in question. In the absence of such pleading or any proof of negligence on part of the deceased in causing the accident in question, amount cannot be deducted from the compensation payable to the Claimants, by attributing any contributory negligence to the deceased.

8. The challenge of the appellant is, therefore, without any merit and is rejected.

9. The appellant further challenges the Impugned Award insofar as it directs payment of interest at the rate of 9% per annum on the compensation determined.

10. The learned counsel for the appellant submits that the rate of interest is excessive, keeping in view the then prevailing rate of interest on the fixed deposits.

11. I have considered the submissions made by the learned counsels for the parties.

12. The appellant has not placed on record any proof of the then prevailing rate of interest on the fixed deposits. In any case, the accident had taken place on 28.04.2017, while the Impugned Award has been passed on 29.07.2022. In absence of any proof to the contrary, the rate of interest awarded by the learned Tribunal cannot be said to be excessive or unreasonable.

13. I, therefore, find no merit in the present appeal. The same is, accordingly, dismissed.



14. The statutory amount deposited by the appellant be returned back to the appellant alongwith interest accrued thereon.

NAVIN CHAWLA, J

AUGUST 25, 2023/Arya/AS

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