

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

Decided on: 9th February, 2012

+ **MAC APP. 103/2007**

NATIONAL INSURANCE CO. LTD.

..... Appellant

Through: Mr. Pankaj Seth, Advocate

Versus

MOHD SABIR & ORS.

..... Respondents

Through: Mr. Anshuman Bal, Advocate
for Respondents No.1 to 4.

CORAM:

HON'BLE MR. JUSTICE G.P. MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

CM APPL No.19148/2011 (restoration)

The application is not opposed on behalf of the Respondents. It is allowed and the Appeal is restored to its original number.

The application stands disposed of.

MAC. APP. No. 103/2007

1. The Appellant National Insurance Co. Ltd. seeks reduction of compensation of ₹2,40,220/- awarded for the death of Atish Ahmed who was aged 22 years at the time of the accident which occurred on 19.12.2005.

2. By the impugned order, the Claims Tribunal took the deceased's income of an unskilled worker to be ₹3165/- per month, deducted $\frac{2}{3}$ rd towards the deceased's personal and living expenses as the deceased was a bachelor and Respondents No.1 to 4 (Claimants before the Tribunal) who were the deceased's elder brothers and sisters were not financially dependent upon him. The Claims Tribunal took $\frac{1}{3}$ rd of the deceased's income as the loss of dependency and applied the multiplier of 17 to compute the loss of dependency as ₹2,15,220/-. On adding further sum of ₹25,000/- towards loss of love and affection and expenses on last rites, a compensation of ₹2,40,220/- was awarded.
3. It is urged by the learned counsel for the Appellant that it was accepted by the Claims Tribunal that the Respondents No.1 to 4 were not financially dependent on the deceased. Thus, no amount of compensation should have been awarded except on account of loss of love and affection. It is submitted that a statutory compensation under Section 140 of the Motor Vehicles Act (the Act) i.e. ₹50,000/- could have been awarded to the Respondents who were the legal representatives of the deceased.
4. The learned counsel for the Respondents No.1 to 4 referred to para 10 of the judgment of Madhya Pradesh High Court in *Gajanand & Ors v. Virendra Singh & Ors*, 1(2009) ACC 206, wherein it was held as under:

“10. In the matter of Manjuri Bera v. Oriental Insurance Co. Ltd. IV(2007) SLT 276 II (2007) ACC 365 (SC) decided on 30.3.2007, Hon'ble Apex Court had an occasion to consider whether the married daughter is entitled for compensation as she was not dependent on the deceased and observed as under:

As observed by this Court in Custodian of Branches of BANCO National Ultramarino v. Nalini Bai Naique, AIR 1989 SC 1589, the definition contained in section 2(11), Civil Procedure Code is inclusive in character and its scope is wide, it is not confined to legal heirs only. Instead it stipulates that a person who may or may not be legal heir competent to inherit the property of the deceased can represent the estate of the deceased person. It includes heirs as well as persons who represent the estate even without title either as executors or administrators in possession of the estate of the deceased. AH such persons would be covered by the expression 'legal representative'. As observed in Gujarat State Road Trans. Corporation v. Ramanbhai Prabhatbhai 1987 SC1690, a legal representative is one who suffers on account of death of a person due to a motor vehicle accident and need not necessarily be a wife, husband, parents and child.”

5. There is no dispute about the proposition of law that the legal representatives who represent the estate of the deceased can apply for grant of compensation under Section 166 of the Act. The question for determination is whether there was any loss of dependency or the award of compensation would be under the non-pecuniary heads and towards loss to estate. In *Narender Singh & Ors v. Sudershan Kumar & Ors*, 2005 ACJ 731, this Court held that the compensation towards loss of dependency can be awarded only when there is financial loss to the legal representatives. In para 69 of the report, it was held as under:

“69. Taking all these factors into consideration, can it be said that appellants have suffered any monetary or financial loss due to the death of their parents and brother. I am afraid, the answer is in the negative. For sure, they have suffered the loss of love and affection, parental guidance and encouragement, trauma and perhaps a host of other sudden discomforts-but certainly not any financial loss because they were not financially dependent on their parents and brother. Applying the law laid down by Apex Court, there is no loss of dependency that requires to be compensated-but there is loss of love and affection.....”

6. In *Manjuri Bera v. Oriental Insurance Co. Ltd.* AIR 2007 SC 1474, the Supreme Court took definition of legal representatives from Section 211 of the CPC and held that all such persons who were covered by the definition of special legal representatives can maintain a petition for compensation under the Motor Vehicles Act, though there may not be loss of dependency. It was held that the legal representatives would be entitled to the compensation at least under Section 140 of the Motor Vehicles Act. Para 12 to 16 of the report are extracted hereunder:

“12. According to Section 2(11) CPC, “legal representative” means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued. Almost in similar terms is the definition of legal representative under the Arbitration and Conciliation Act, 1996 i.e. under Section 2(1)(g).

13. As observed by this Court in Custodian of Branches of BANCO National Ultramarino v. Nalini Bai Naique (AIR 1989 SC 1589) the definition contained in Section 2(11) CPC is inclusive in character and its scope is wide, it is not confined to legal heirs only. Instead it stipulates that a person who may or may not be legal heir competent to inherit the property of the deceased can represent the estate of the deceased person. It includes heirs as well as persons who represent the estate even without title either as executors or administrators in possession of the estate of the deceased. All such persons would be covered by the expression “legal representative”. As observed in Gujarat State Road Transport Corporation v. Ramanbhai Prabhatbha and Anr. (AIR 1987 SC 1690) a legal representative is one who suffers on account of death of a person due to a motor vehicle accident and need not necessarily be a wife, husband, parent and child.

14. There are several factors which have to be noted. The liability under Section 140 of the Act does not cease because there is absence of dependency. The right to file a claim application has to be considered in the background of right to entitlement. While assessing the quantum, the multiplier system is applied because of deprivation of dependency. In other words, multiplier is a measure. There are three stages while assessing the question of entitlement. Firstly, the liability of the person who is liable and the person who is to indemnify the liability, if any. Next is the quantification and Section 166 is primarily in the nature of recovery proceedings. As noted above, liability in terms of Section 140 of the Act does not cease because of absence of dependency.

15. Section 165 of the Act also throws some light on the controversy. The Explanation includes the liability under Sections 140 and 163-A.

16. Judged in that background where a legal representative who is not dependant files an application

for compensation, the quantum cannot be less than the liability referable to Section 140 of the Act. Therefore, even if there is no loss of dependency the claimant if he or she is a legal representative will be entitled to compensation, the quantum of which shall be not less than the liability flowing from Section 140 of the Act. The appeal is allowed to the aforesaid extent. There will be no order as to costs. We record our appreciation for the able assistance rendered by Shri Jayant Bhushan, the learned amicus curiae.”

7. The judgment in the case of *Gajanand & Ors(supra)* which is relied on by the counsel for the Respondent merely talks about the entitlement of the legal representative to claim compensation which cannot be disputed. The authority relied, therefore, does not help the Respondents.
8. Since the Respondents No.1 to 4 were not financially dependent on the deceased, they are not entitled to any sum on account of loss of dependency. I award them a sum of ₹50,000/- towards loss to estate which is payable on the basis of no-fault liability under Section 140 of the Motor Vehicles Act. In addition, the Respondents would be entitled to a sum of ₹25,000/- towards love and affection and ₹10,000/- towards funeral expenses.
9. The compensation of ₹85,000/- shall carry interest @ 7.5% per annum from the date of filing of the claim petition till the date of deposit which shall be deposited with the Registrar General of this Court within 30 days.

10. The execution of the award was stayed subject to the deposit of the award amount and a sum of ₹50,000/- was ordered to be released to the Respondents No.1 to 4. It is stated by the learned counsel for the Respondents No.1 to 4 that the said amount has not been withdrawn. It is, therefore, directed that if the sum of ₹50,000/- has not been withdrawn, the awarded compensation of ₹85,000/- along with interest @ 7.5% per annum from the date of filing of the petition till the date of deposit shall be released in favour of the Respondents No.1 to 4 in equal proportions.
11. The appeal is allowed in above terms.
12. The statutory amount of ₹25,000/- deposited be returned to the Appellant.

(G.P. MITTAL)
JUDGE

FEBRUARY 09, 2012

pst