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

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Judgment delivered on: 5th July, 2013

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CM(M) No. 45/2012

VIJAY KUMAR SINGH

..... Petitioner

Through: Mr.Lokesh Kumar Mishra, Advocate.

Versus

MAHESH KUMAR & ORS.

..... Respondents

Through: Mr.R.C.Mahajan, Advocate for
Respondent No.3/Insurance
Company.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

CM No.707/2012 (for delay)

In view of the averments made in the application, the delay of six days in filing the instant appeal is condoned.

The application stands disposed of.

CM(M) No. 45/2012

1. Vide the present petition, the petitioner has challenged the impugned order dated 24.10.2011, whereby the learned Tribunal has dismissed the application filed by the petitioner under Order I Rule 2 read with Section 151 CPC for impleading the minor brothers of the deceased, namely, Rupesh Kumar Tipu, Vikas Kumar Singh and grandmother Smt. Raj Roop Devi as LR's of the deceased.

2. Learned counsel appearing on behalf of the petitioner has informed this Court that grandmother Smt. Raj Roop Devi has expired after filing of the aforesaid application, therefore, he is not seeking any relief qua her.

3. I note, the learned Tribunal has dismissed the application on the ground that brother and other relation of the deceased are not the heirs of the deceased, not being his legal representatives, and cannot claim compensation under the Motor Vehicles Act in the presence of their father.

4. While recording the aforesaid noting, the learned Tribunal has relied upon the case of ***Sarla Varma & Ors. Vs. Delhi Transport Corporation & Anr., 2009) 6 SCC 121***, wherein the Supreme Court has observed that”

“ in the absence of any evidence to the contrary, brothers and sisters are not to be considered as dependants because they would either be dependant and earning or married or be dependent on the father.”

5. Learned counsel for the petitioner submitted that both the brothers, named above, are minor and not married and they were dependant solely on the deceased.

6. In support of his submissions, learned counsel has relied upon a case of ***Gujarat State Transport Corpn. Vs. Ramanbhai Prabhatbhai & Anr., 1987 ACJ 561***, wherein the Supreme Court has observed as under:-

“10. Clauses (b) and (c) of sub-section (1) of section 110-A of the Act provide that an application for compensation arising out of an accident may be made where death has resulted from the accident by all or any of the legal representatives of the deceased or by any agent duly authorised by all or any of the legal representatives of the deceased. The proviso to sub-section (1) of section 110-A provides that where all the legal

representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined shall be impleaded as respondents to the application. The expression 'legal representative' has not been defined in the Act. Section 2(11) of the Code of Civil Procedure, 1908 defines 'legal representative' as 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. The above definition, no doubt, in terms does not apply to a case before the Claims Tribunal but it has to be stated that even in ordinary parlance the said expression is understood almost in the same way in which it is defined in the Code of Civil Procedure. A legal representative ordinarily means a person who in law represents the estate of a deceased person or a person on whom the estate devolves on the death of an individual. Clause (b) of sub-section (1) of section 110-A of the Act authorises all or any of the legal representatives of the deceased to make an application for compensation before the Claims Tribunal for the death of the deceased on account of a motor vehicle accident and clause (c) of that sub-section authorises any agent duly authorised by all or any of the legal representatives of the deceased to make it. The proviso to sub-section (1) of section 110-A of the Act appears to be of some significance. It provides that the application for compensation shall be made on behalf of or for the benefit of all the legal representatives of the deceased. Section 110-A(1) of the Act thus expressly states that (i) an application for compensation may be made by the legal representatives of the deceased or their agent and (ii) that such application shall be made on behalf of or for the benefit of all the legal representatives. Both the persons or person who can make an application for compensation and the persons for whose benefit such application can be made are thus indicated in section 110-A of the Act. This section in a way is a substitute to the extent

indicated above for the provisions of section 1A of the Fatal Accidents Act, 1855 which provides that "every such action or suit shall be for the benefit of the wife, husband, parent and child, if any, of the person whose death shall have been so caused, and shall be brought by and in the name of the executor, administrator or representative of the person deceased." While the Fatal Accidents Act, 1855 provides that such suit shall be for the benefit of the wife, husband, parent and child of the deceased, section 110-A(1) of the Act says that the application shall be made on behalf of or for the benefit of the legal representatives of the deceased. A legal representative in a given case need not necessarily be a wife, husband, parent and child. It is further seen from section 110-B of the Act that the Claims Tribunal is authorised to make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid. This provision takes the place of the third paragraph of section 1A of the Fatal Accidents Act, 1855 which provides that in every such action, the Court may give such damages as it may think proportioned to the loss resulting from such death to the parties respectively, for whom and for whose benefit such action shall be 'brought. Persons for whose benefit such an application can be made and the manner in which the compensation awarded may be distributed amongst the persons for whose benefit the application is made are dealt with by section 110-A and section 110-B of the Act and to that extent the provisions of the Act do supersede the provisions of the Fatal Accidents Act, 1855 in so far as motor vehicles accidents are concerned. These provisions are not merely procedural provisions. They substantively affect the rights of the parties. As the right of action created by the Fatal Accidents Act, 1855 was "new in its species, new in its quality, new in its principles, in every way new" the right given to the legal representatives under the Act to file an application for compensation for death due to a motor vehicle accident is equally new and an enlarged one. This new right cannot be hedged in by all the limitations of an

action under the Fatal Accidents Act, 1855. New situations and new dangers require new strategies and new remedies.”

7. Learned counsel has submitted that where the death has resulted from an accident, all or any of the legal representatives has right to file the claim petition.

8. Learned counsel has also relied upon a case of ***Brijnandan Sharan Bansal & Ors. Vs. Pepsu Road Transport Corporation & Anr., 2007 ACJ 692***, decided by the High Court of Uttaranchal at Nainital, wherein it is held that dependency is not required to file a claim petition.

9. On the other hand, learned counsel appearing on behalf of the respondent No.3/Insurance Company has submitted that the accident in question took place on 02.07.2006; the petition was filed on 28.03.2007, wherein father was the only petitioner; the evidence was closed on 27.01.2011 and the aforesaid application seeking impleadment had been filed at a belated stage.

10. He further submitted that the learned Tribunal has rightly taken in view the case of ***Sarla Varma*** (*supra*).

11. In the facts and circumstances of the case, I am of the view that there is no bar in filing the application seeking impleadment as claimant in the claim petition; however, the claim has to be established before the learned Tribunal by leading evidence. Accordingly, the learned Tribunal can grant compensation in favour of the claimants, who are dependents or representatives of the deceased. Therefore, in my considered opinion the petitioners cannot be denied from claiming their legal right.

12. Moreover, in the case of *Sarla Varma* (*supra*), it is clearly mentioned that in the absence of any evidence to the contrary brothers and sisters are not to be considered as dependents. The application of the petitioner has been dismissed pre-maturely because no evidence has been led by him to prove whether the applicants were dependent on the income of the deceased or not.

13. Consequently, the learned Tribunal is directed to get the minor brothers, named above, impleaded as claimants. However, the learned Tribunal shall be at liberty to decide after looking into the evidence to be adduced by them whether they were dependent on the income of the deceased or they are entitled to any compensation.

14. In view of the above discussion, the order dated 24.10.2011 is hereby set aside.

15. Accordingly, the petition is allowed.

16. A copy of this order be given *dasti* to the learned counsel for the parties.

CM No.706/2012 (for stay)

With the disposal of the petition itself, the instant application has become *infructuous*. The same is accordingly disposed of.

SURESH KAIT, J.

JULY 05, 2013

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