

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 5850 of 2002

Date of decision:- 17.11.2015

Mothu Singh & others

...Appellants

Versus

Kewalpreet Singh & others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Ashwani Arora, Advocate
for the appellants

Mr. Rajbir Singh, Advocate
for respondent No. 2

Mr. Neeraj Khanna, Advocate
for respondent No. 3

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RITU BAHRI J.

1. The present appeal has been preferred by the claimants-appellants (for short 'the appellants'), against award dated 11.10.2002 passed by the learned Motor Accident Claims Tribunal, Sangrur (for short, 'the Tribunal') whereby the claim petition filed by the appellants under Section 166 of the Motor Vehicles Act, has been dismissed

FACTS NOT IN DISPUTE

2. On 11.07.1999, when Jangir Kaur (since deceased) reached on the Tongawal-Longowal road, then a truck bearing registration No. PB-04-B-9788, which was being driven rashly and negligently by Chamkaur Singh-respondent No. 2 came from the side of village Longowal and hit against

Jangir Kaur, as a result of which she sustained injuries. The accident was witnessed by Mothu Singh and Bhim Singh. Jangir Kaur was taken to Civil Hospital, Sangrur by Mothu Singh and Bhim Singh, but she died on the way. Jangir Kaur was 53 years and was a mill-vendor.

3. The learned counsel for the claimants-appellants contends that the learned Tribunal has wrongly dismissed the claim petition filed by the appellants on the ground that none of the appellants were even remotely dependent upon deceased Jangir Kaur, who herself had no income and has to survive and sustain herself on Budhapa pension, granted to her by the State Government.

4. Reference has been made to a judgment of Hon'ble the Supreme Court of India in a case of **Montford Brothers of St Gabriel and another vs. United India Insurance and another etc., 2014 STPL (Web)**

53 SC wherein in para 8, 11 and 16, it has been observed as under:-

“8. The only issue noted above requires to look into Section 166 of the Motor Vehicles Act, 1988, (hereinafter referred to as ‘The Act’). Sub-section (1) of Section 166 is relevant for the purpose. It provides thus: “166. Application for compensation:-(1) An application for compensation arising out of an accident of the nature specified in sub-section (1) of section 165 may be made— (a) by the person who has sustained the injury; or (b) by the owner of the property; or (c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or (d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be: Provided 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.

11. Learned counsel for the Insurance Company tried to persuade us that since the term `legal representative' has not been defined under the Act, the provision of Section 1-A of the Fatal Accidents Act, 1855, should be taken as guiding principle and the claim should be confined only for the benefit of wife, husband, parent and child, if any, of the person whose death has been caused by the accident. In this context, he cited judgment of this Court in the case of Gujarat State Road Transport Corporation, Ahmedabad vs. Raman Bhai Prabhatbhai & Anr.1. In that case, covered by the Motor Vehicles Act of 1939, the claimant was a brother of a deceased killed in a motor vehicle accident. The Court rejected the contention of the appellant that since the term `legal representative' is not defined under the Motor Vehicles Act, the right of filing the claim should be controlled by the provisions of Fatal Accident Act. It was specifically held that Motor Vehicles Act creates new and enlarged right for filing an application for compensation and such right cannot be hedged in by the limitations on an action under the Fatal Accidents Act. Paragraph 11 of the report reflects the correct philosophy which should guide the courts interpreting legal provisions of beneficial legislations providing for compensation to those who had suffered loss.

“11. We feel that the view taken by the Gujarat High Court is in consonance with the principles of justice, equity and good conscience having regard to the conditions of the Indian society. Every legal representative who suffers on account of the death of a person due to a motor vehicle accident should have a remedy for realisation of compensation and that is provided by Sections 110-A to 110-

F of the Act. These provisions are in consonance with the principles of law of torts that every injury must have a remedy. It is for the Motor Vehicles Accidents Tribunal to determine the compensation which appears to it to be just as provided in Section 110-B of the Act and to specify the person or persons to whom compensation shall be paid. The determination of the compensation payable and its apportionment as required by Section 110-B of the Act amongst the legal representatives for whose benefit an application may be filed under Section 110-A of the Act have to be done in accordance with well-known principles of law. We should remember that in an Indian family brothers, sisters and brothers' children and some times foster children live together and they are dependent upon the bread-winner of the family and if the bread-winner is killed on account of a motor vehicle accident, there is no justification to deny them compensation relying upon the provisions of the Fatal Accidents Act, 1855 which as we have already held has been substantially modified by the provisions contained in the Act in relation to cases arising out of motor vehicles accidents. We express our approval of the decision in Megjibhai Khimji Vira v. Chaturbhai Taljabhai, (AIR 1977 Guj.195) and hold that the brother of a person who dies in a motor vehicle accident is entitled to maintain a petition under Section 110-A of the Act if he is a legal representative of the deceased."

16. A perusal of the judgment and order of the Tribunal discloses that although issue no.1 was not pressed and hence decided in favour of the claimants/appellants, while considering the quantum of compensation for the claimants the Tribunal adopted a very cautious approach and framed a question for itself as to what should be the criterion for assessing compensation in such case where the deceased

was a Roman Catholic and joined the church services after denouncing his family, and as such having no actual dependants or earning? For answering this issue the Tribunal relied not only upon judgments of American and English Courts but also upon Indian judgments for coming to the conclusion that even a religious order or organization may suffer considerable loss due to death of a voluntary worker. The Tribunal also went on to decide who should be entitled for compensation as legal representative of the deceased and for that purpose it relied upon the Full Bench judgment of Patna High Court reported in AIR 1987 Pat. 239, which held that the term 'legal representative' is wide enough to include even "intermeddlers" with the estate of a deceased. The Tribunal also referred to some Indian judgments in which it was held that successors to the trusteeship and trust property are legal representatives within the meaning of Section 2(11) of the Code of Civil Procedure."

5. On the other hand, the learned counsel for the respondent-Insurance Company has vehemently opposed the present appeal and contends that if the appeal of the appellants be allowed, the recovery rights be given to the Insurance Company..

6. I have heard learned counsel for the parties and perused the record.

RE-ASSESSED COMPENSATION

7. It is not in dispute that the accident had taken place and the offending vehicle was fully insured with the Insurance company. The only question which requires consideration before this Court is that whether the appellants who are sons and daughters of the deceased Jangir Kaur are entitled to compensation when they are not dependant on their mother.

8. To answer this question, reference can be made to a judgment of this Court in a case of ***New India Assurance Co. Ltd. vs. Kuldeep Singh and others, passed in FAO No. 308 of 2013, decided on 06.02.2013,*** wherein in para 2 of the judgment, it has been observed as under:-

“2. When the assessment is made on the basis of dependency, loss to estate which is one of the heads of claim becomes merely a conventional head of claim to be satisfied. On the other hand, when the sons or daughters who are majors themselves and who may not be dependents, the loss to estate could become considerable for the sons and daughters who are legal heirs to the father. If the deceased male would have earned and left an estate that could have been inherited by the children that should be quantified as amount payable. In this case since the deceased was 54 years and he would have earned for the rest of his productive life and made possible an accrual to an estate that could have fallen to the hands of the legal heirs, a complete rejection of claim is simply not possible. In this case, if the Court has assessed the income of the deceased at `6,200/-, I would assume such a person would have left behind an accrual not less than the amount which is already determined. Even if the claim cannot be sustained the loss of dependency, it could be justified as going towards loss to estate.”

9. Thus, it is irrelevant whether the appellants who are sons and

daughters of their deceased mother, are major and are dependent on their mother and father. It is not merely the class of dependants who are entitled to compensation. They are covered under Section 165 of the Motor Vehicles Act. It will be wrong to assume that if a claimant is not dependant on a deceased, the claim cannot be prosecuted at all. A legal heir suffers a loss by the fact that the person to whom he is such a heir dies in an accident.

10. Now, to assess the salary of the deceased, reference can be made to a judgment of this Court in a case of ***Gurdeep Kaur v. Tarsem Singh, 2008(2) RCR (Civil) 774*** whereby this Court in a case of death of a person who was having agricultural land of 07 acres, took his salary at Rs.3000/- per month.

11. Reference at this stage can also further be made to a judgment passed by Hon'ble the Supreme Court in a case of ***General Manager, Kerala State Road Transport Corporation, Trivandrum vs. Mrs. Susamma Thomas and others, 1994 SCC (Cri) 335*** whereby Hon'ble the Supreme Court in an old case of 1984 had taken the monthly income of deceased at Rs.2000/- and dependency comes to Rs.1400 and thereafter multiplier of 12 was applied. Rs.15,000/- was given on account of loss of consortium and loss of estate.

12. Applying the ratio of the above mentioned judgments, the salary of the deceased can be taken at Rs.3000/- per month and the annual dependency comes to Rs.36000/- and multiplier of 7 would be applied as she was more than 60 years of age and the amount comes to Rs. 2,52,000/-

and Rs.1,25,000/- is awarded towards conventional heads. The total compensation of Rs. 3,77,000/- is awarded to the appellants

13. Accordingly, award dated 11.10.2002 passed by the learned Tribunal is hereby set aside and the appeal is allowed and the appellants are held entitled to compensation of Rs.3,77,000/-, which shall be payable by the respondent-Insurance Company, within a period of forty five days from the date of receipt of certified copy of this order. The enhanced amount of compensation shall carry interest @ 9% per annum from the date of filing of the claim petition, till its realization, in view of the judgment of Hon'ble the Supreme Court in a case of ***Kumari Kiran through her father Harinarayan vs. Sajjan Singh and others, 2015(1) SCC 539***. The liability shall therefore be on the respondents for the entire amount as determined above and it shall be open for the insurance company to recover the said amount from the owner and driver of the offending truck, if they are so advised, in view of the judgment passed by Hon'ble the Supreme Court in a case of ***Oriental Insurance Co. Ltd. vs. Angad Kol and others, 2009(2) RCR (Civil) 419***

November 17, 2015

G Arora

(**RITU BAHRI**)
JUDGE