IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.1911 of 2002 (O&M)
Date of decision: 24.12.2015

Mohinder Kumar

….Appellant

Versus

Surmukh Singh and others

….Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Ishwar Lal, Advocate
for the appellant.

Mr. Pradeep Kumar, Advocate
for respondent No.3.

RITU BAHRI J. (Oral)

This appeal has been filed by the claimant-appellant seeking enhancement of compensation awarded by Motor Accident Claims Tribunal, Patiala (hereinafter referred to as 'the Tribunal') vide award dated 12.01.2002, on account of death of Gian Devi in a motor vehicular accident.

FACTS NOT IN DISPUTE

On 18.03.2000, at about 08:00 a.m., Gian Devi (since deceased) was going on her left hand side on road. A Tata bus bearing registration No.PJP-5566 being driven rashly and negligently by Surmukh Singh-respondent No.1, came from the

MOHD YAKUB
2016.01.28 15:16
I attest to the accuracy and
authenticity of this document
Chandigarh

side of Hira Chowk and hit Gian Devi. She fell down and was crushed by the said bus and died at the spot.

In this regard, FIR No.99 dated 18.03.2000, under Section 304-A IPC, in respect of the accident in question was got registered at Police Station City Rajpura.

Consequently, the claimant-appellant filed a claim petition before the Tribunal.

COMPENSATION ASSESSED BY THE MACT

Before the Tribunal, Dr. Romesh Kumar appeared as AW-2 and deposed that on 18.03.2000, he was standing in front of his house. Jagdish Kumar was also with him. They were talking with each other. In the meantime, a Tata bus bearing registration No.PJP-5566 came from the side of Hira Chowk and was proceeding towards K.S.M. road. The said bus was being driven by Surmukh Singh-respondent No.1 rashly and negligently. Gian Devi was also coming from the vegetable market and was proceeding to her own house. The bus driver struck the said bus against Gian Devi. As a result of said impact, her head was crushed under the tyre of the said bus and she died at the spot. The bus stopped at the spot and the bus driver told his name as Surmukh Singh.

The claimant have further produced on record the certified copy of FIR Ex.A-3, copy of post-mortem report as Ex.A-1.

MOHD YAKUB
2016.01.28 15:16
I attest to the accuracy and
authenticity of this document
Chandigarh

Neither the driver of the offending vehicle nor any other person claiming to have witnessed the accident appeared in the witness-box to rebut the statements of witnesses.

Ultimately on the basis of the evidence led by the parties, the Tribunal has came to the conclusion that the accident in question was occurred due to the rash and negligent driving by respondent No.1 and the Tribunal has rightly returned the finding on Issue No.1 in favour of the claimant-appellant.

The claim petition was partly accepted by the Tribunal and a sum of Rs.50,000/- was awarded as compensation on account of death of Gian Devi.

Mohinder Kumar appeared as AW-1 and deposed that Gian Devi was an R.M.P. Doctor. A copy of her certificate was doing medical practice and was earning Rs.3,500/- per month. He further deposed that she used to pay Rs.2,000/- to him. He has admitted that he is working as a Head Cashier in UCO Bank, Mulana. He was 40 years of age. He has further deposed that he was married and had three children.

The Tribunal has held that the claimant-appellant was dependent upon himself and he was not dependent upon his mother, namely, Gian Devi. Hence, the Tribunal has awarded a sum of Rs.50,000/- to the claimant-appellant on account of death of Gian Devi.

Feeling dissatisfied with the impugned award, the

MOHD YAKUB
2016.01.28 15:16
I attest to the accuracy and
authenticity of this document
Chandigarh

claimant-appellant has preferred the present appeal.

REASSESSED COMPENSATION

Learned counsel for the appellant contends that the Tribunal has only awarded a sum of Rs.50,000/- by holding that the claimant-appellant was not dependent upon the deceased-Gian Devi. Learned counsel for the appellant has placed reliance on ***"Mothu Singh and others vs Kewalpreet Singh and others"*** passed by this Court in FAO No.5850 of 2002 decided on 17.11.2015. Reference has further been made to a judgment of Hon'ble the Supreme Court of India in case ***"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'). Subsection (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 subsection (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 inured or all or any of the legal representatives of the deceased, as the case may be: Provided that where all the legal representatives of*

MOHD YAKUB
2016.01.28 15:16
I attest to the accuracy and
authenticity of this document
Chandigarh

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.*

MOHD YAKUB
2016.01.28 15:16
I attest to the accuracy and
authenticity of this document
Chandigarh

*"**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*

MOHD YAKUB
2016.01.28 15:16
I attest to the accuracy and
authenticity of this document
Chandigarh

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."*

MOHD YAKUB
2016.01.28 15:16
I attest to the accuracy and
authenticity of this document
Chandigarh

On the other hand, the learned counsel for the respondent-Insurance Company has vehemently opposed the present appeal and contends that the Tribunal has rightly awarded the amount of compensation to the claimant-appellant.

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

The fact of accident is admitted and proved. It stands established that the deceased has died as a result of the accident.

The only question which requires consideration before this Court is that whether the claimant-appellant, who is son of the deceased-Gian Devi and was not dependent upon his mother is entitled for compensation or not.

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*

MOHD YAKUB
2016.01.28 15:16
I attest to the accuracy and
authenticity of this document
Chandigarh

> *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 Rs.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."*

So, by applying the ration of the aforesaid judgments, the salary of deceased-Gain Devi is taken as Rs.3,000/- per month as deposed by AW-2, Dr. Romesh Kumar. The annual dependency comes to Rs.36,000/- and by applying the multiplier of 7, the amount of compensation comes to Rs.2,52,000/- and Rs.1,25,000/- is awarded towards conventional heads. Hence, the amount of compensation comes to Rs.3,77,000/-, and after deducting Rs.50,000/- which was already awarded before the Tribunal, the total amount of compensation comes to Rs.3,27,000/-.

The enhanced amount of compensation of **Rs.3,27,000/-** shall be payable within a period of two months from the date of receipt of certified copy of this order. The enhanced amount of compensation shall carry interest @ 9% per annum

MOHD YAKUB
2016.01.28 15:16
I attest to the accuracy and
authenticity of this document
Chandigarh

from the date of filing of the claim petition, till its realization, in view of the judgment of Hon'ble the Supreme Court in the case of "***Kumari Kiran through her father Harinarayan vs. Sajjan Singh and others",*** **2015(1) SCC 539**. Remaining conditions of disbursal of amount shall remain unaltered.

Accordingly, the award stands modified to the above extent and the present appeal is partly allowed.

(RITU BAHRI)
JUDGE

24.12.2015
yakub

MOHD YAKUB
2016.01.28 15:16
I attest to the accuracy and
authenticity of this document
Chandigarh