

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.6495 of 2012 (O&M)
Date of Decision:18 .03.2015

Dharmender and another

....Appellants

Versus

Mustak Ahmed and others

....Respondents

CORAM: HON'BLE MS. JUSTICE NAVITA SINGH

Present: Mr. Vivek Suri, Advocate for the appellants.

Mr. K.S. Malik, Advocate for respondent No.2.

Ms. Vandana Malhotra, Advocate for respondent No.3.

NAVITA SINGH, J.

1. The appellants being the brother and sister of deceased Anil Kumar filed a petition under Section 163-A of the Motor Vehicles Act (Act for short) to claim compensation for the death of their brother in a motor vehicle accident which took place on 22.8.2010. The Motor Accident Claims Tribunal, Rohtak (Tribunal for short), awarded an amount of Rs.50,000/- with interest holding the owner and driver liable to indemnify the appellants. The Insurance Company was exonerated.

2. The appellants prayed for enhancement of the compensation in view of the second schedule relating to Section 163-A of the Act and also for the Insurance Company to be held liable to pay the appellants though the Company may get a right to make recovery from the insured.

3. Counsel for the appellants argued that the Tribunal wrongly held that the appellants were not dependent on the earnings of the deceased. He relied on the judgment of the Supreme Court reported as Gujarat State Road Transport Corporation, Ahmedabad Vs. Ramanbhai Prabhatbhai and another 1987 AIR

(SC) 1690. It was held in the said reported case that all persons, who may be said to be legal representatives of the deceased and on whom the estate would devolve, could maintain a petition for compensation.

4. However, it would be seen that in the same case the Supreme Court had held that in Indian families, brother and their children live together and are dependent on bread winner of the family and if the bread winner is killed, all other persons in the family would have a right to be compensated.

5. In the present case, the deceased was not the bread earner of the entire family. Appellant Dharmender is the elder brother of the deceased while Anita is married and settled in the house of her inlaws. The brother had separate income while the sister was married being 38 years old. Both the appellants were, thus, not in any way dependent on the income of the deceased. They would, thus, be entitled to be compensated for emotional loss. Rather if the deceased had any moveable and immovable property, the appellants gained from that as well. Every legal representative may not be the 'dependent' of the deceased.

6. The appellants, in order to extract compensation, very cleverly deposed that they were dependent on the income of the deceased but in the cross examination, their stand was falsified because appellant Dharmender stated that he was older than the deceased having independent income, while Anita was proved to be well settled in her matrimonial home. They tried to show that the deceased was an agriculturist and, therefore, if he was holding any land, the same must have also fallen to the hands of the appellants and they lost nothing on account of that. Rather they gained the property on account of the death of Anil Kumar.

7. The Tribunal came to the conclusion that the driver of the offending vehicle was not possessed with any driving licence at the relevant time, much less a valid one. The Insurance Company was, thus, also rightly exonerated. No fault can be found with the award passed by the Tribunal and the same does not call for any change.

8. The appeal is dismissed.

(NAVITA SINGH)
JUDGE

18.03.2015
Ishwar

Whether to be referred to reporter: Yes