IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1) FAO No. 2759 of 2013 (O&M)

United India Insurance Company .....Appellant

Versus

Monish Kumar Mishra and others ....Respondents

2) FAO No. 2751 of 2013 (O&M)

Monish Kumar Mishra and another .....Appellants

Versus

Ramanjit Singh and others ....Respondents

Date of Decision:- 13.08.2015

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

1. **Whether Reporters of local papers may be allowed to see the judgment?**
2. **To be referred to the Reporters or not?**
3. **Whether the judgment should be reported in the Digest?**

Present: Mr. Rakesh Kumar, Advocate
for the appellant in 1st case and
for respondent No.3 in 2nd case-Insurance Company.

Mr. R.K. Shukla, Advocate
for respondent Nos.1 & 2 in 1st case and
for appellant in 2nd case.

Mr. Inder Mohan Parithar, Advocate
for respondent No.3 in 1st case and
for respondent No.1 in 2nd case.

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SHEKHER DHAWAN, J.

Learned counsel for appellant-Insurance Company took the plea that both the claimants are son and daughter of deceased Birendra Kumar Mishra alias Virender Kumar Mishra. Claimant Monish Kumar Mishra, aged about 23 years cannot be said to be dependent upon the income of the deceased and there is no such material and evidence available on the file in respect of that. Neha Mishra was daughter and she was major on the date of accident and as such she was also not dependent upon income of the deceased and none of the claimant was entitled to receive any amount by way of compensation. In support of his arguments, learned counsel for appellant-Insurance Company placed reliance upon judgment from Hon'ble Supreme Court in case **Manjuri Bera** Vs. **Oriental Insurance Co. Ltd. and another**, **2007 ACJ 1279** and Hon'ble Supreme Court observed that right to file a claim application has to be considered in the background of right to entitlement. More so, the liability in terms of Section 140 of the Act does not cease because of absence of dependency. 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. Hon'ble Supreme Court also observed that 'No fault liability' envisaged in Section 140 of the Motor Vehicles Act, is distinguishable from the rule of 'strict liability'. In the former, the compensation amount is fixed. It is ₹50,000/- in cases of death [Section 40(2)]. It is statutory liability. His legal representative, namely, his daughter has inherited his estate. She was entitled to inherit his estate. In the circumstances, she was entitled to receive compensation under 'no fault liability' in terms of Section 140 of the said Act.

2. On the same point, reliance has also been placed upon judgment from Hon'ble Andhra Pradesh High Court in case **P. Johnson** Vs. **K. Preiasamy and another**, **2012 ACJ 155**, wherein, Hon'ble Andhra Pradesh High Court observed that as per Section 140 of the Motor Vehicles Act, the claimant who was not dependent on the deceased is entitled to claim compensation from the owner and insurance company of the offending vehicle on account of death of the deceased. The claimant is only entitled to received ₹50,000/-, the statutory compensation provided for under Section 140 of the Act.

3. While arguing on this point, learned counsel for respondents-claimants took the plea that in fact Neha Mishra was unmarried on the date of accident. There is no material evidence before the Court that Neha Mishra was married on the date of accident. She claimed herself to be dependent upon income of the deceased. Insurance Company has not come with any contrary evidence that in fact Neha Mishra was married on the date of accident or that she was not dependent upon the income of the deceased. So, at least Neha Mishra, one of the claimants, is entitled to receive amount of compensation, as she was dependent upon the income of the deceased on the date of accident.

4. Having considered the rival contentions raised by learned counsel for the parties, this Court is of the considered view that Neha Mishra was an unmarried daughter and she was certainly entitled to receive compensation. This is on the basis of affidavit, tendered by Monish Kumar Mishra, another claimant, who appeared in the witness box as PW1 and tendered his affidavit (Ex.PW1/A) that she was just of the age of 18 years and unmarried daughter and was certainly dependent upon income of her father unless proved otherwise. The Tribunal has rightly held that claimant Neha Mishra was dependent on the income of the deceased. As regards to right of claimant, Monish Kumar Mishra, he was about 23 years of the age and cannot be said to be dependent upon the income of the deceased and as such not entitled to receive any amount of compensation.

5. In view of the above, the facts of the case in hand are distinguishable from **Manjuri Bera** Vs. **Oriental Insurance Co. Ltd. and another** and **P. Johnson** Vs. **K. Preiasamy and another** **cases (supra)**.

6. Resultantly, the present appeal filed at the instance of appellant-Insurance Company is without any merit and stands dismissed. Claimant-Neha Mishra shall be entitled to receive the entire amount of compensation on account of death of her father Birendra Kumar Mishra alias Virender Kumar Mishra, who died in motor vehicle accident and Monish Kumar Mishra shall not be entitled to receive any amount of compensation.

FAO No. 2751 of 2013

Learned counsel for appellants-claimants took the plea that the Tribunal has not taken into consideration the correct income of the deceased, as Birendra Kumar Mishra alias Virender Kumar Mishra was getting salary of ₹8,625/-. Apart from that, he was getting pension of ₹7,765/-. Nothing has been added on account of future prospects of earnings though he was of the age of 48 years of age. Nothing has been awarded on account of love and affection, transportation charges and funeral expenses. So, the amount of compensation be enhanced suitably.

2. Learned counsel for the respondent-Insurance took the plea that appeal filed by claimants for enhancement is not maintainable, as deceased who produced documents that he remained unemployed for 15 days only. This factum was taken into consideration while taking income of the deceased ₹9,000/- per month.

3. Having considered the rival contentions raised by learned counsel for the parties, this Court is of the considered view that the Tribunal has rightly taken the income of the deceased to be ₹9000/- per month because salary certificate (Ex.P9) was showing his employment of 15 days only and salary income of ₹8,625/-. Apart from that, he was getting pension of ₹7,765/-. It is contrary on the file that after death of Birendra Kumar Mishra alias Virender Kumar Mishra, payment on account of pension was not to be made to son and daughter, who were not dependents on the income of the deceased, but later on were not eligible to get the pension, as daughter also performed marriage, after death of her

father. Still, the Tribunal taking into consideration the entirety of the matter, rightly taken the monthly income of ₹9,000/- per month and there is no contrary evidence available on file calling for further enhancement. However, the Tribunal has not taken into consideration the fact that deceased was of the age of 48 years and with the passage of time his income was to grow. As per ratio of law laid down by Hon'ble Supreme Court in case **Rajesh and others** Vs. **Rajbir Singh and others**, **2013 (3), RCR (Civil) 170,** claimants are entitled to seek 30% enhancement on account of enhanced future earnings, as the age of the deceased Birendra Kumar Mishra alias Virender Kumar Mishra was 48 years. The claimants also entitled to receive a sum of ₹25,000/- on account of funeral expenses but the Tribuanl awarded just ₹10,000/- on account of funeral expenses. Accordingly, the amount of compensation is reassessed as under: -

Monthly income	₹9,000/-
Annual Loss of income	₹9,000 x 12 = ₹1,08,000/-
Applying multiplier of 13	₹1,08,000/- x 13 = ₹14,04,000/-
Less 1/3rd on account of dependency	₹14,04,000 - ₹4,68,000 = ₹9,36,000
Addition of 30% on account of loss of enhanced future earnings	₹9,36,000/- + ₹3,12,000/- = ₹12,48,000/-
Funeral expenses	₹25,000/-
Total compensation	₹12,48,000/- + ₹25,000/- = ₹12,73,000/-
Enhanced amount of compensation	₹12,73,000 – ₹9,46,000/- = ₹3,27,000/-

4. The enhanced amount of compensation of ₹3,27,000/- shall be payable from the date of claim petition along with interest @ 7.5% per annum from the date of claim petition. Remaining conditions of disbursal of amount shall remain unaltered.

5. Accordingly, appeal filed by claimants-appellants is accepted partly and appeal filed by Insurance Company stands dismissed.

(SHEKHER DHAWAN)
Judge

August 13, 2015
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