

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

**XOBS No.105-CII of 2015 in/and
FAO No.2371 of 2015 (O&M)
Date of Decision: October 07, 2015.**

Shri Ram General Insurance Co. Ltd.

.....APPELLANT(s).

VERSUS

Urmila and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Rajbir, Advocate for
Mr. Sanjeev Goyal, Advocate
for the appellant-insurance company.

Mr. Surender Saini, Advocate
for respondent No.1/cross-objector.

Mr. Arvind Yadav, Advocate
for respondents No.2 and 3.

SURINDER GUPTA, J.

This judgment will dispose of appeal filed by Shri Ram General Insurance Company Limited against award dated 07.09.2014 passed by Motor Accident Claims Tribunal, Sonipat (later referred to as the Tribunal) and the cross-objections filed by claimant Urmila seeking enhancement of compensation.

Rahul, brother of claimant Urmila died in a motor accident with bus bearing registration No.HR-69-3601 (later referred to as the offending vehicle). The deceased was 22 years of age. The Tribunal assessed his

monthly income as ₹6,000/- per month and calculated the dependancy of married sister of deceased to the tune of ₹2,500/- per month. After applying the multiplier of 17, the amount of dependancy was calculated as ₹5,10,000/- to which funeral expenses were added to the tune of ₹25,000/-.

Learned counsel for the appellant-insurance company has argued that the claimant/cross-objector is married elder sister of deceased. Her husband is alive. The parents of deceased have already died. Though the claimant is the legal representative of the deceased, who was unmarried but in no manner, was dependant on his income. The Tribunal has wrongly allowed compensation holding that she being the legal representative of the deceased, is entitled to claim the same. At the most, the claimant is entitled to compensation on account of no fault liability.

Learned counsel for respondent No.1/cross-objector has argued that the parents of claimant have already died. The deceased was the younger brother of claimant and was living with her in her house. He was contributing to the family expenses of claimant. The Tribunal has rightly held her to be dependant on the deceased but while calculating the compensation, the multiplier of 17 has been wrongly applied and no amount has been allowed towards loss of love and affection, loss to the estate and future prospects.

The claimant is the elder married sister of the deceased and is living with her husband. No doubt, she has been deprived of love and affection and services of the deceased but at the same time, her dependancy on the income of the deceased cannot be equated as that of wife, children, parents, unmarried brothers, sisters etc. of deceased. The claimant has filed

the petition under Section 166 of the Motor Vehicles Act, which reads as follows:-

“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.

(2) Every application under sub-section (1) shall be made, at the option of the claimant, either to the Claims Tribunal having jurisdiction over the area in which the accident occurred, or to the Claims Tribunal within the local limits of whose jurisdiction the claimant resides or carries on business or within the local limits of whose jurisdiction the defendant resides, and shall be in such form and contain such particulars as may be prescribed:

Provided that where no claim for compensation under section 140 is made in such application, the application shall contain a separate statement to that effect immediately before the signature of the applicant.]

(4) The Claims Tribunal shall treat any report of accidents

forwarded to it under sub-section (6) of section 158 as an application for compensation under this Act.”

As per clause (c) to Sub Section 1 of Section 166, all or any of the legal representative of the deceased are authorised to file claim petition. Proviso to that Sub Section makes it mandatory to join as respondents those legal representatives, who have not joined as claimants. On filing of the application claiming compensation, the award is to be made in view of the provisions contained in Section 168. The Tribunal has to determine the amount of compensation which is just and appropriate to be awarded to the claimant. Thus, there is distinction which is 'right to apply for compensation' and 'entitlement to compensation'.

In this case, married sister of deceased being a legal representative, was competent to file application under Section 166 of the Act, claiming compensation. However, this fact is not denied that she lives with her husband in her matrimonial home, as such, cannot claim any amount of compensation in her capacity as dependant on the deceased. The Tribunal while pondering over this question of dependancy of the claimant over the deceased, has observed that the word 'dependant' has not been defined under the Motor Vehicles Act and the claimant being the sister of the deceased and his legal representative, representing her estate, is entitled to compensation. But at the same time, the Tribunal recorded a categorical finding in para 21 which reads as follows:-

“Though, Smt. Urmila-claimant was not dependent upon the income of the deceased Rahul but in view of the provisions laid down in Section 166(1)(c) of the Act, she has become legal representative of her deceased brother

Rahul immediately on his death in a vehicular accident. Accordingly, it is held that the claimant is entitled to seek compensation under the M. V. Act being legal representative of her deceased brother Rahul.”

The deceased was not the bread earner of the claimant or her family. She is living with her husband and is dependant on him. No doubt, with the death of her brother, she has suffered on account of loss of love and affection, loss to the estate and has been deprived for the services of her brother and entitle to just compensation under Section 168 of the Act. However, the compensation cannot be allowed by taking into account the income of the deceased and by applying multiplier as awarded by the Tribunal.

In case ***Gujarat State Road Transport Corporation, Ahmedabad Vs. Ramanbhai Prabhatbhai and another*** 1987 AIR (SC) 1690, Hon'ble Supreme Court has observed as follows:-

“13. 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 110B 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 and another v. Chaturbhai Taljabhai and others, (supra)*** 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.”

In view of the above discussion, I am of the considered opinion that the Tribunal has committed grave error of law while allowing compensation by taking the dependancy of the claimant on the income of the deceased as if the claimant has lost a bread winner of her family.

The claimant is entitled to compensation for loss of love and affection and for loss to the estate. The deceased was living with the claimant and was providing some type of services to run her household. She is entitled to compensation on this count as well. The compensation to

which the claimant is entitled, is tabulated as follows:-

<i>Sl.No.</i>	<i>Heads</i>	<i>Calculation</i>
(i)	Loss of love and affection	₹100000
(ii)	Loss of estate	₹100000
(iii)	On account of loss of services of deceased	₹75000
(iv)	Funeral expenses	₹25000
<i>Total</i>		₹300000

In view of my above discussion, the cross-objections filed by claimant Urmila Devi have no merits. The same are dismissed. The appeal filed by the insurance company is partly allowed and amount of compensation awarded to the claimant Smt. Urmila is reduced from ₹5,35,000/- to ₹3,00,000/-. She shall also be entitled to interest on the amount of compensation at the rate as allowed by the Tribunal. Keeping in view the peculiar facts and circumstances of the case, parties are left to bear their own costs.

October 07, 2015.
Sachin M.

(SURINDER GUPTA)
JUDGE