IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.5701 of 2015 (O&M)
Date of decision: 22.12.2015

National Insurance Company Limited

....Appellant

Versus

Jashanjeet Singh and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Sandeep Suri, Advocate
for the appellant.

Mr. Ashwani Arora, Advocate
for respondent No.1/cross-objector.

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

<u>RITU BAHRI J. (Oral)</u>

This is an appeal filed by National Insurance Company Limited, against the award dated 03.04.2015, passed by Motor Accident Claims Tribunal, Chandigarh, vide which the claim petition was accepted and a sum of Rs.16,37,295/- was allowed, on account of death of Shamsher Singh Rana, in a motor vehicular accident, which took place on 11.11.2012.

FACTS NOT IN DISPUTE

On 11.11.2012, at about 02:50 p.m., Shamsher Singh Rana (since deceased) was coming from Ludhiana to Panchkula via Duraha and Neelon, while sitting in Alto car bearing No.PB-

65-F-2597, which was being driven by Satwinder Singh, at slow speed on left side of the road. Smt. Harminder Kaur was another occupant of the said car. They were being followed by Pardeep Singh and Harshpreet Singh in a separate car. When they reached near village Kubbe, Police Station Samrala, at that time, a Scorpio car bearing registration No.CH-01-AN-8284, came at a fast speed from the opposite direction on wrong side of the road and it struck against the said Alto car. The Scorpio car was being driven at a fast speed in a rash and negligent manner by respondent No.1-Jasvinder Singh. Due to the said accident, they all received serious injuries. Satwinder Singh died on the spot, whereas, Shamsher Singh Rana and Smt. Harminder Kaur were taken to Civil Hospital, Samrala and from there they were taken to Apollo Hospital, Ludhiana, where they both died.

In this regard, FIR No.226 dated 11.11.2012, under Sections 279, 304-A and 427 IPC, in respect of the accident in question was got registered at Police Station Samrala, District Khanna, at the instance of Pardeep Singh son of Mohinder Singh.

Consequently, the claimants-respondents filed a claim petition before the Tribunal.

COMPENSATION ASSESSED BY THE MACT

Before the Tribunal, Pardeep Singh (eye-witness) appeared as PW-2 and tendered his affidavit Ex.PW-2/A, to prove the accident in question. 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 claimants-respondents.

The claim petition was partly accepted by the Tribunal and a sum of Rs.16,37,295/- was awarded as compensation on account of death of Shamsher Singh Rana along with future interest at the rate of 7.5% per annum from the date of filing of the petition till its realization.

PW-4-Vinod Kumar has deposed that after retirement from the Punjab and Haryana High Court, Chandigarh as Reader on 31.08.2005, the deceased-Shamsher Singh Rana, was re-employed as Deputy Administrative Officer (Central Recruitment Agency) on ad-hoc basis w.e.f. 12.10.2011 for a period of one year on remuneration of Rs.17,000/- per month (fixed). After completion of that period, he was again re-employed w.e.f. 15.10.2012 to 14.10.2013 at a fixed remuneration of Rs.16,653/- per month. PW-5-Ms. Ritu Ahuja has deposed that after attaining the age of superannuation, his pension (basic) was Rs.11,175/- excluding D.A. and medical, which is paid and fixed by the concerned bank, in which the pension is credited.

PW-1-Ramesh Kumar, Tax Assistant, Ward 5(4), Chandigarh, has brought the record pertaining to Income-tax returns of the deceased-Shamsher Singh Rana, for the assessment years 2010-11, 2011-12 and 2012-13 and he proved the copies thereof as Ex.P-2 to Ex.P-4. The total income of the deceased-Shamsher Singh Rana is reflected as Rs.4,68,180/- as per the last income-tax return i.e. for the assessment year 2012-13 and from the said amount a sum of Rs.21,810/- has been deducted as tax. So, after deduction, the net income of the deceased-Shamsher Singh Rana, comes to Rs.4,46,370/-.

The annual income of the deceased was assessed at Rs.4,46,370/- per annum, out of which ½ amount was deducted towards personal expenses. The dependency of claimants, thus, came to Rs.2,23,185/- per annum. Shamsher Singh Rana (deceased) was 65 years of age at the time of the accident/death and the multiplier of 7 was applied. Thus, the claimants were found entitled to compensation of Rs.15,62,295/-. In addition to it, further compensation of Rs.50,000/- was awarded towards loss of love and affection and Rs.25,000/- in respect of transportation, funeral expenses and last rites. Hence, the claimants were found entitled to total compensation of Rs.16,37,295/-.

Feeling dissatisfied with the impugned award, the National Insurance Company Limited has preferred the present appeal.

Learned counsel for the appellant has submitted that the present appeal has been filed solely on the ground that the claimant-appellant was major son of the deceased and he was not dependent upon him.

On the other hand, learned counsel for respondent No.1 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 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."

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-Shamsher Singh Rana and was not dependent upon his father, 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 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.”

Keeping in view the above facts and circumstances of the present case and by applying the ratio of aforesaid judgments, the appeal filed by the appellant i.e. National Insurance Company Limited, is hereby dismissed.

X-OBJC No.251-CII of 2015

The cross-objection has been filed by respondent No.1 seeking enhancement of compensation.

Learned counsel for respondent No.1/cross-objector has stated at the bar that only a sum of Rs.50,000/- has been awarded under the head of loss of love and affection to the cross-objector/respondent No.1, which is grossly on lower side. He has further stated that the Tribunal had wrongly deducted ½ as personal expenditure of the deceased and it should be deducted as 1/3rd.

I have heard the contention raised by learned counsel for cross-objector/respondent No.1, but do not find any force in that contention as the respondent No.1 is the sole dependent on the deceased and thus, the Tribunal has rightly deducted ½ as personal expenditure of the deceased. So, no ground for interference is made out.

Dismissed.

(RITU BAHRI)
JUDGE

22.12.2015

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