

HIGH COURT OF CHHATTISGARH, BILASPUR**Miscellaneous Appeal No.551 of 2001**

Ashish Kumar Dubey, S/o Late Mithlesh Dubey, aged about 7 years (Minor) through his natural guardian Smt. Archana Dubey (mother) R/o Lal Bada, Gudiyari, Raipur, Chhattisgarh

---- Appellant**versus**

1. United India Insurance Co. Ltd. Through Divisional Manager, U.I.I.C. Ltd. In front of Kachhari Chowk, Jail Road, District Raipur, Chhattisgarh
2. S. Ganeshan, S/o Sudharjan, Madras, R/o Sharadgiri, District Salem (T.N.) present address: G.M. Roadline, Tatibandh, District Raipur, Chhattisgarh
3. Smt. T. Saraswati, W/o S.A. Kapuswami, D. No.11-A, Salem Main Road Sankari, PO Sankari, District Salem (T.N.)
4. Goverdhan Prasad, S/o Khanjachi Prasad Dubey, aged about 60 years,
5. Ramkumari, W/o Goverdhan Prasad Dubey, aged about 58 years,
6. Shailesh Kumar Dubey, S/o Late Shri Mithlesh Kumar Dubey, aged about 11 years, through his local guardian (Grand Father) Shri Goverdhan Prasad S/o Khanjachi Prasad Dubey,

Respondents No.4 to 6 are R/o Shrinagar Khamartalai, P.S. Khamartalai, Raipur, Chhattisgarh

---- Respondents

For Appellant	:	Shri Alok Nigam, Advocate
For Respondent No.1	:	Shri Ghanshyam Patel, Advocate

Hon'ble Shri Deepak Gupta, Chief Justice**Order on Board****5.8.2016**

1. This appeal has been filed by Ashish Kumar Dubey, a minor son of deceased Mithlesh Dubey against award dated 11.5.2001 passed in Claim Case No.16 of 1999 by the Second Additional Motor Accidents Claims Tribunal, Raipur. Appellant Ashish Kumar Dubey was arrayed as Respondent No.4 in the claim petition on the ground that he, being a minor son of deceased Mithlesh Dubey, was not entitled to claim compensation.

2. The undisputed facts of the case are that deceased Mithlesh Dubey died in a motor accident. A claim petition was filed by his father

Goverdhan Dubey, mother Ramkumari Dubey and deceased's minor son Shailesh Dubey, who was, at that time, aged about 11 years. Son Shailesh Dubey used to live along with his father and grand father in a joint family. Deceased Mithlesh Dubey, before his death, had divorced his wife Smt. Archana Dubey in the year 1994. Present Appellant Ashish Kumar Dubey, who is another son of deceased Mithlesh Dubey and was less than 5 years of age at the time of death of his father was residing with his mother Smt. Archana Dubey. The Claimants had shown Appellant Ashish in the claim petition as son of deceased Mithlesh Dubey and had arrayed him therein as Respondent No.4.

3. The Claims Tribunal came to the conclusion that since Respondent No.4/Appellant herein was living with his mother, he was not dependent on the deceased and, therefore, he was not entitled to any compensation. The view taken by the Claims Tribunal is absolutely erroneous and against the settled principles of law and provisions of the Motor Vehicles Act, 1988 (henceforth 'the Act').

4. Section 166 of the Act runs thus:

“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.

- (3) Omitted.
- (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.”

5. A claim petition on account of death can be filed by any of the legal representatives of the deceased. There can be no manner of doubt that the Appellant being the son of the deceased was his legal representative. He was, therefore, entitled to file a claim petition. A petition under Section 166 of the Act is a petition in the representative capacity which endures for the benefit of all the legal representatives. In this behalf, reference may be made to Section 158(6) of the Act, which runs thus:

“158. Production of certain certificates, licence and permit in certain cases.—(1) xxxxx xxxxx xxxxx

xxxxx

xxxxx

xxxx

(6) As soon as any information regarding any accident involving death or bodily injury to any person is recorded or report under this section is completed by a police officer, the officer incharge of the police station shall forward a copy of the same within thirty days from the date of recording of information or, as the case may be, on completion of such report to the Claims Tribunal having jurisdiction and a copy thereof to the concerned insurer, and where a copy is made available to the owner, he shall also within thirty days of receipt of such report, forward the same to such Claims Tribunal and Insurer.”

6. The above-quoted provision of Section 158(6) of the Act provides that whenever a First Information Report regarding any accident involving death or bodily injury to any person is recorded, the police officer concerned is required to forward a copy of the FIR within 30 days of the receipt of the information to the Claims Tribunal having jurisdiction and a copy thereof to the concerned insurer. Where a copy of the FIR has been made available to the owner, he is also required under the law to forward the same within 30 days of receipt of such report to the Claims Tribunal and the insurer. Thereafter, it is the duty of the Claims Tribunal to treat this information as a claim petition under the Act. The scheme of the Act is that when an accident takes place, a Claimant should not be deprived of compensation and the same should be paid at the earliest.

7. In **Jai Prakash v. National Insurance Company Limited, (2010) 2 SCC 607**, the Apex Court has issued certain directions to the Claims Tribunal as under:

“Directions to the Claims Tribunals

20. The Registrar General of each High Court is directed to instruct all Claims Tribunals in his State to register the reports of accidents received under Section 158(6) of the Act as applications for compensation under Section 166(4) of the Act and deal with them without waiting for the filing of

claim applications by the injured or by the family of the deceased. The Registrar General shall ensure that necessary registers, forms and other support is extended to the Tribunal to give effect to Section 166(4) of the Act.

21. For complying with Section 166(4) of the Act, the jurisdictional Motor Accidents Claims Tribunals shall initiate the following steps:

(a) The Tribunal shall maintain an institution register for recording the AIRs which are received from the Station House Officers of the police stations and register them as miscellaneous petitions. If any private claim petitions are directly filed with reference to an AIR, they should also be recorded in the register.

(b) The Tribunal shall list the AIRs as miscellaneous petitions. It shall fix a date for preliminary hearing so as to enable the police to notify such date to the victim (family of the victim in the event of death) and the owner, driver and insurer of the vehicle involved in the accident. Once the claimant(s) appear, the miscellaneous application shall be converted to claim petition. Where a claimant(s) file the claim petition even before the receipt of the AIR by the Tribunal, the AIR may be tagged to the claim petition.

(c) The Tribunal shall enquire and satisfy itself that the AIR relates to a real accident and is not the result of any collusion and fabrication of an accident (by any “police officer-advocate-doctor” nexus, which has come to light in several cases).

(d) The Tribunal shall by a summary enquiry ascertain the dependent family members/legal heirs. The jurisdictional police shall also enquire and submit the names of the dependent legal heirs.

(e) The Tribunal shall categorise the claim cases registered, into those where the insurer disputes liability and those where the insurer does not dispute the liability.

(f) Wherever the insurer does not dispute the liability under the policy, the Tribunal shall make an endeavor to

determine the compensation amount by a summary enquiry or refer the matter to the Lok Adalat for settlement, so as to dispose of the claim petition itself, within a time-frame not exceeding six months from the date of registration of the claim petition.

(g) The insurance companies shall be directed to deposit the admitted amount or the amount determined, with the Claims Tribunals within 30 days of determination. The Tribunals should ensure that the compensation amount is kept in a fixed deposit and disbursed as per the directions contained in *Kerala SRTC v. Susamma Thomas*, (1994) 2 SCC 176.

(h) As the proceedings initiated in pursuance of Sections 158(6) and 166(4) of the Act are different in nature from an application by the victim(s) under Section 166(1) of the Act, Section 170 will not apply. The insurers will therefore be entitled to assist the Tribunal (either independently or with the owners of the vehicles) to verify the correctness in regard to the accident, injuries, age, income and dependants of the deceased victim and in determining the quantum of compensation.”

8. In the instant case, in my considered opinion, the Claims Tribunal was totally wrong in holding that the Appellant was not dependent on the deceased. The Claims Tribunal probably lost sight of the fact that the Appellant, at that time, was only about 5 years of age. Both under the Hindu Marriage Act as well as under the provisions of Section 125 of the Code of Criminal Procedure, it is the duty of the father to maintain his child and, therefore, even if the child was living with the divorced mother, the father cannot say that he is not responsible to look after his child and as such the child continues to be remained with his father. The Claims Tribunal must remember that a duty is cast upon it to ensure that 'just compensation' is paid to a Claimant. The claim petitions are in the nature of enquiries and not civil suit. Therefore, strict rules or procedures may

not apply. This does not mean that provisions of the Evidence Act or that of the Code of Civil Procedure are not at all applicable. What this Court is emphasising is that claim petitions should not be rejected on highly technical grounds. Furthermore, a Claims Tribunal and for that matter, any judicial authority must remember that when minors are involved, persons with disability are involved, persons with unsound mind are involved, much care should be taken as a duty is cast upon them to ensure that injustice is not done to such persons. Reference may be made to Order XXII and Order XXIII of the Code of Civil Procedure, which makes it obligatory that even in case a compromise has been entered into by the guardian, it is for the Court to certify that the compromise is in benefit of the minor. Without such certification, even if a compromise is entered into by the guardian, such compromise shall not be binding upon the minor. A Presiding Officer of a Court is in the nature of a guardian of such minor and stands in the capacity of '*paterfamilias*', which means that he is the father and family of such minor.

9. In the instant case, I am sorry to say that the Claims Tribunal totally erred while deciding the claim petition.

10. The compensation awarded, in my opinion, is on lower side. However, none of the three original Claimants have filed any appeal. Therefore, I am of the view that the best course would be to award to Appellant Ashish Kumar Dubey the same amount of compensation which has been awarded to his brother Shailesh Dubey by the Claims Tribunal. After apportionment, the Claims Tribunal has awarded a sum of Rs.1,28,080/- to brother Shailesh Dubey.

11. In view of the above discussion, the award passed by the Claims Tribunal is modified and the compensation awarded by it is enhanced by Rs.1,28,080/- which shall be paid to Appellant Ashish Kumar Dubey, who, by now, has become major. This compensation shall carry the same

interest as has been awarded by the Claims Tribunal to the other Claimants.

12. The appeal is disposed of. The insurer/company is directed to deposit the enhanced amount of compensation of Rs.1,28,080/- along with the interest before the Claims Tribunal within three months from today.

13. A copy of this order along with the directions issued by the Apex Court in **Jai Prakash case** (supra) be sent to the Director General of Police at the earliest to ensure that the provisions of Section 158(6) of the Act are followed in letter and spirit in the State of Chhattisgarh. A copy of this order be also sent to all the Motor Accidents Claims Tribunals in the State.

Sd/-

(Deepak Gupta)
CHIEF JUSTICE