

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

**FAO No.3479 of 2002 (O&M).
Date of Decision: 07.04.2016.**

National Insurance Company LimitedAppellant.

VERSUS

Ved Rani and othersRespondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Naveen Kapoor, Advocate for the appellant.

Mr. Ashwani Gaur, Advocate for respondent No.1.

Service on respondents No.2 and 3 was dispensed with vide
order dated 25.02.2014.

SNEH PRASHAR, J.

Assailing the award dated 28.02.2002 passed by Motor
Accident Claims Tribunal, Karnal (for short, “the Tribunal”) by virtue of
which the claim petition filed by respondent No.1-Ved Rani-claimant was
allowed, the appellant-insurer of truck bearing registration No.HYG-1345
(hereinafter referred to as the “offending truck”) filed the instant appeal.

A petition claiming compensation under Section 166 of the
Motor Vehicles Act, 1988 (for short, “the Act of 1988”) was filed by
Kishan Chand (since deceased) claiming compensation for the injuries
sustained by him in a motor accident that took place on 04.05.1998. At the

time of accident, he was driving his motorcycle No.HR-05B-0514 and was going from Ghraunda to Panipat on his official routine inspection, being a Forester in Forest Department, when near village Kohand on G.T. Road after he had stopped for some time to check the ladies who were felling trees and was then about to start his motorcycle, suddenly the offending truck, being driven at a very high speed and in a rash and negligent driving, came from his backside and dashed against his motorcycle. As a result of accident he suffered multiple injuries.

The owner, driver and insurer of the offending truck were impleaded as respondents who contested the petition. During pendency of the petition, Kishan Chand died on 11.04.2000. His widow-legal representative Ved Rani was substituted as claimant in his place. It was also alleged that Kishan Chand had died due to the injuries suffered by him during the accident.

Learned Tribunal did not accept the plea of the claimant that Kishan Chand had died due to the injuries suffered by him during the accident and held that the claimant-widow of the deceased is entitled to receive compensation only in respect of the injuries sustained by her deceased husband during the accident. Accordingly, a total amount of Rs.1,50,000/- i.e. (i) Rs.20,000/- for pain and suffering; (ii) Rs.30,000/- for expenses on medicine and treatment; (iii) Rs.70,000/- for adverse effect on the income of the petitioner due to 25% permanent disability; Rs.10,000/- for attendant, conveyance and special diet; Rs.15,000/- on account of loss of income due to admission in the hospital from 04.06.1998 to January,

1999; and Rs.5000/- for unforeseen expenses, was awarded by learned Tribunal.

Feeling dissatisfied, the claimant-appellant preferred the instant appeal.

The submissions made by Mr. Naveen Kapoor, learned counsel for the appellant and Mr. Ashwani Gaur, learned counsel for respondent No.1 have been head and record perused.

Learned counsel for the appellant argued with vehemence that since Kishan Chand had died not due to the injuries received by him in a motor accident but due to some other cause, the right to sue would survive only to the extent of loss to the estate of the deceased, if any. The claimant-widow was incompetent to carry on to pursue the petition for personal loss i.e. injuries etc. suffered by her deceased husband. It is only the pecuniary damages suffered by the deceased consequent to the motor accident which his legal heirs are entitled to recover. To support his argument, learned counsel relied upon **Indraj vs. Naresh Kumar, 1999(2) S.L.J. 1443.**

Before going into the contentious issue, the proposition of law laid down in Indraj's case (supra) is reproduced hereunder:-

“On a consideration of the controversy, it is clear that a claim petition would not abate on the death of the claimant insofar as the claim relates to the pecuniary loss caused to the deceased as a result of the motor accident. If there was any loss to the estate of the deceased, cause of action would survive. If the deceased suffered economic loss also and had

initiated action prior to his death, the beneficiaries shall be allowed to recover the same from the persons responsible for causing that loss. Loss to the estate may include loss of earnings of the deceased and loss to her property. On their substitution, the legal representatives shall be permitted to prosecute only that part of the claim of the deceased, which related to the loss to her estate.”

There are no two thoughts on the proposition that where an application claiming compensation is filed by the injured and the injured dies pending disposal of the application, the legal representatives of the deceased would be entitled to claim compensation only to the extent of loss to the estate of the deceased. In the case in hand, learned Tribunal held that the death of deceased Kishan Chand cannot be said to have occurred as a result of the injuries sustained by him in the accident on 04.05.1998, rather Kishan Chand died as a result of cardiorespiratory arrest as he was suffering from left frontal tuberculoma.

The death of Kishan Chand may not be connected to the injuries suffered by him during the accident but the fact remains that his widow-legal representative is entitled to recover economic loss suffered by the deceased as a result of the injuries sustained by him during the accident. As explained in Indraj's case (supra) the loss of estate includes loss of earnings of the deceased and loss of his/her property.

As indicated above, except for the amount of Rs.20,000/- awarded by learned Tribunal as compensation for pain and suffering the

entire remaining amount awarded as compensation was related to the pecuniary loss suffered by the deceased as a result of motor accident. Admittedly, Kishan Chand had initiated action to recover the pecuniary loss suffered by him prior to his death. Therefore, as far as the amount of Rs.20,000/- awarded towards pain and suffering is concerned, in my considered opinion, at this stage it shall not be judicious to recover back the amount of Rs.20,000/- already disbursed to the widow of the deceased.

Thus, finding no merit in the appeal, it is hereby dismissed.

(SNEH PRASHAR)
JUDGE

07.04.2016.

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