IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 2662 of 2012 (O&M)
Date of Decision : 18.05.2016

Kuldeep Kaur and others .....Appellants

Versus

Sarvesh and others .....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. R.S. Mamli, Advocate
for the appellants.

Mr. R.C. Kapoor, Advocate
for respondent no. 3-Insurance Company.

Surinder Gupta, J.

This is appeal by claimants seeking enhancement of compensation awarded by the Motor Accident Claims Tribunal, Yamuna Nagar at Jagadhri (later referred to as 'the Tribunal') for death of Gurcharan Singh (later referred to as 'the deceased'), father of claimant Tarsem Singh (since deceased) now represented by his legal heirs and claimants no. 2 to 6 and proforma respondents no. 4 to 6 in a motor vehicle accident with truck No. HR-56-6702 (later referred to as 'the offending vehicle').

2. As the only issue involved in this appeal is seeking of enhancement of compensation, detailed facts of the case are being skipped for the sake of brevity.

3. Case of claimant, in brief, is that the deceased died in a motor vehicle accident with the offending vehicle on 28.02.2009. The deceased was 60 years of age and was running a grocery shop thereby earning ₹10,000/- per month.

4. The Tribunal assessed age of the deceased as 70 years and keeping in view the fact that claimants and proforma respondents were son

and daughters of the deceased, who are married, allowed compensation of ₹70,000/- in lump sum towards loss of love and affection.

5. Learned counsel for appellants has argued that the deceased has left behind eight daughters and one son, who has also died, leaving behind his wife and two minor sons. Though, the Tribunal has assessed age of the deceased as 70 years still at this age one is active and remains himself engaged in activities/business to help his family. Kuldeep Kaur-claimant no. 1 while appearing as PW-1 has stated that the deceased was running a grocery shop and was having income of ₹10,000/- per month. The mere fact that claimants, who are daughters and son of the deceased, are married does not mean that they were not dependant on income of the deceased. The daughters always look toward their parents and remain dependant on them throughout their life. The conclusion drawn by the Tribunal that married son and daughters were not dependant on their father is perverse and not sustainable in the eyes of law.

6. Learned counsel for respondent no. 3-Insurance Company while relying on the observation in case of ***Manjuri Bera* vs. *Oriental Insurance Co. Ltd. and another*, 2007 ACJ 1279** has argued that the Tribunal allowed compensation of ₹70,000/- to claimants while being married son and daughters they were entitled to only a sum of ₹50,000/- under Section 140 (2) of the Motor Vehicles Act as they were not dependant on their father.

7. I agree with learned counsel for appellants that even married daughters are also dependant on their parents. In our society, parents not only take care of their married daughters and sons but also their grandchildren. To say that after marriage of sons and daughters, they are no more dependent on their parents is fallacy. In this case mother of claimants had already died. As stated by claimants, the deceased was running a

grocery shop. The Tribunal has not controverted or disbelieved the statement of claimant-Kuldeep Kaur to this effect. An old person of the age of 70 years when living with his son and his family always provides some assistance to them particularly when he is an earning hand. The deceased was having 8 daughters. It is well known that parents help their daughters on various occasions, festivals and family functions, which is also a sort of dependence of daughters on their parents. In the citation referred by learned counsel for respondent no. 3-Insurance Company, the facts of the case were narrated in para 19 as follows:-

> *"19. In the present case, as stated above, the victim's married daughter has made her claim under Section 140 of the said Act saying that she has five children; that they are minors; that she was brought up by her uncle; that after her mother's death the deceased lived in the same house in which the claimant was living with her uncle before her marriage; that the deceased was a mason that after her marriage she lived with her husband and, therefore, she was entitled to get statutory compensation under Section 140 of the said Act."*

8. In above referred case, claimants appear to have claimed compensation under Section 140 of Motor Vehicle Act on the ground that she was brought up by her uncle and lived with her husband and family in his house. In the present case, claimants are claiming compensation for death of their father in a motor vehicle accident with the offending vehicle. It is no more *res integra* that as per provisions of Section 166 of the Motor Vehicles Act, claimants being legal representatives were entitled to claim compensation. In case of ***Gujarat State Road Transport Corporation* vs.**

***Ramanbhai Prabhatbhai*, AIR 1987 (SC) 1690**, it was observed that a legal representative is one who suffers on account of death of a person due to motor vehicle accident and need not necessarily be a wife, husband, parent and child. In case of ***Smt. Satva Devi and another* vs. *Mr. Nihal Singh and others*, FAO No. 517 of 1986 decided on 06.01.2004,** this Court has observed that in our society, the daughters continue to get assistance from their parents even after their marriage. The Hindu parents feel their duty and obligation to pay to their daughters even after they get married. In this case, claimants, though, are married daughters and son, still for all type of assistance and guidance were dependent on their father, who was living with them and was also an earning hand. Even otherwise, the Insurance Company has not come up with appeal against the award of compensation to claimants for the death of their father, as assessed by the Tribunal, as such, the argument of learned counsel for respondent no. 3-Insurance Company that claimants are not entitled to any compensation is without merit.

9. In view of my above discussion, claimants are entitled to compensation for death of their father in a motor vehicle accident in their capacity being dependent as well. As per claimants, the deceased was running a grocery shop but have not been able to substantiate their contention by leading any documentary evidence in this regard. Keeping in view the price index, quantum of salary prevailing at that time and further that even in case of non-earning member income can be assessed as ₹30,000/- per annum, income of the deceased can be safely taken as ₹5000/- per month and by applying deduction of 50% towards his personal expenses, amount of dependency thus works out to be ₹2500/- per month to which multiplier of 5 as per norms settled in case of ***Sarla Verma and ors. vs. Delhi Transport Corporation and another, (2009) 6 SCC 121***, can be

applied. Claimants are also entitled to compensation of ₹1 lac towards loss of love and affection for death of their father and ₹25,000/- towards funeral expenses.

10. In view of my discussion above, the compensation to which claimants are entitled is tabulated as follows:-

Sr. No.	***Heads***	***Calculation***
(i)	Age of Gurcharan Singh (deceased)	70 years
(ii)	Income of the deceased	₹5000 per month
(iii)	½ of (ii) deducted as personal expenses of the deceased	₹5000-₹2500= ₹2500 per month
(iv)	Compensation after multiplier of 5 is applied	(₹2500X12X5) = ₹150000
(v)	Loss of estate, love and affection	₹100000
(vi)	Compensation for funeral expenses	₹25000
Total		₹275000

11. As a sequel of my above discussion, the appeal is accepted. Award of the Tribunal is modified and compensation allowed to claimants is enhanced from ₹70,000/- to ₹2,75,000/-. The enhanced amount of compensation will carry interest @ 7.5% per annum from the date of filing of claim petition till actual realization. Amount of compensation shall be apportioned amongst son (now his legal heirs) and daughters of deceased in equal shares. Respondent No. 3 being insurer of the offending vehicle will deposit the share of claimants-appellants in their bank accounts or pay the same through demand drafts. The Insurance Company on payment of compensation amount shall have the right to recover the same from insured as held by the Tribunal. Counsel fee is assessed at ₹20,000/-.

May 18, 2016 **(SURINDER GUPTA)**
jk **JUDGE**