IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-5944-2012 (O&M)
Date of decision: 9.2.2016

New India Assurance Company Limited
...Appellant

Versus

Kesar Singh and others
...Respondents

2 FAO-1879 -2013 (O&M)

Kesar Singh and others
...Appellant

Versus

Sukhdev Singh and others
...Respondents

CORAM: HON'BLE MRS.JUSTICE SNEH PRASHAR

Present: Mr.Vipul Sharma, Advocate for
Mr.Paul S.Saini, Advocate for the Insurance Company

Mr.RK Matoo, Advocate for the claimants

Mr.Mohit Sadana, Advocate for driver and owner

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SNEH PRASHAR, J.

The above captioned two appeals one FAO-1879-2013 filed by the claimants and other FAO-5944-2012 filed by the Insurance Company are directed against the award dated 14.9.2012 passed by Motor Accident Claims Tribunal, Patiala (hereinafter referred to as 'the Tribunal') vide which a sum of Rs.4,10,000/- was allowed as compensation to the claimants on account of death of Madan Singh in a motor vehicular accident on 26.2.2010.

The submissions made by learned counsel for the parties have been heard and record perused.

It is submitted on behalf of the Insurance Company that the claimants are the brothers of the deceased and are all major. None of them was dependent upon the income of the deceased and therefore, they are not entitled to compensation under Section 166 of the Motor Vehicles Act, 1988 (hereafter referred to 'the Act of 1988'). At the most their claim is maintainable under 'no fault liability' as envisaged under Section 140 of the Act of 1988. He relied upon **Manjuri Bera vs. Oriental Insurance Company Ltd. and another 2007 ACJ 1279** and prayed for setting aside the award passed by the Tribunal.

On the other hand, learned counsel representing the claimants submitted that the deceased was a young man aged 34 years. He was working in Main Distillery Factory and was getting salary of Rs.4000/- per month. In addition to that he was engaged in agricultural pursuits as he owned 1½ acres land and used to earn Rs.3000/- per month from the same. The deduction towards personal and living expenses of the deceased should not be more than 1/3rd of his income and the claimants be also compensated for the loss of love and affection.

Admittedly, Madan Singh died due to the injuries suffered by him in a road side accident on 26.2.2010. The deceased was 34 years old and was a bachelor at the time of accident. The petition claiming compensation under Section 166 of the Act of 1988 was filed by three brothers of the deceased, who were all major and married.

Section 166 of the Motor Vehicles Act reads as under:

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 Claim 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. xx xx

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.

Section 8 of the Hindu Succession Act provides for devolution of the property left by a male Hindu who dies intestate i.e. (a) firstly, upon the heirs, being the relatives specified in class I of the Schedule and (b) secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule.

In the case in hand, there is no evidence to show that the deceased was living separately. The claimants are the Class II heirs of the deceased and needless to say are his legal representatives.

With regard to the contention of the Insurance company that the claimants were not dependents of the deceased, this court is of the view that the burden was on the objector-Insurance company to lead substantive and reliable evidence to dislodge the claim of dependency of the claimants. But no evidence was adduced in that regard. The deceased was a young man and was an earning hand. He was living with his brothers-claimants and it is natural that he was contributing to the finances of the family from his income.

In **Gujarat Sate Road Transport Corporation vs. Ramanbhai Prabhatbhai, 1987 ACJ 561**, the Hon'ble Supreme Court held that all the legal heirs and the legal representatives of the deceased can maintain a claim petition under Section 110-A (now under Section 166 (1) of the Motor Vehicles Act and proceeded to award compensation to the nephews of the deceased. In paras 12 & 13 of the judgment it was held as under:-

> "12. Amongst the High courts in India there is a cleavage in the opinion as regards the maintainability of action under Section 110-A of the Act by persons other than the wife, husband, parent and child of the person who dies on account of a motor vehicle accident. All these cases are considered by the High Court of Gujarat in its decision in Megjibhai Khimji Vira v. Chaturbhai Taljabhai (supra). The first set of cases are those which are referred to in paragraph 5 of the above decision which lay down that every claim application for compensation arising out of a fatal accident would be governed by the substantive provisions in Sections 1-A and 2 of the 1855 Act and no dependent of the deceased other than the wife, husband, parent or child would be entitled to commence an action for damages against the tortfeasors. Amongst these cases are ***P.B. Kader v. Thatchamma, AIR 1970 Kerala 241***and ***Dewan Hari Chand v. Municipal Corpn. of Delhi, AIR 1973 Delhi 67.*** The second group of cases are those referred to in Para 6 of the decision of the Gujarat High court. They are ***Perumal v. Ellusamy Reddiar, 1974 Acc CJ 482 (Mad)9*** and the ***Vanguard Insurance Co. Ltd. v. Hanumantha Rao, 1975 Acc CJ - 344 (Andh Pra).*** These cases lay down that while the compensation payable under Section 1-A of the Fatal Accidents Act, 1855 is restricted to the relatives of the deceased named therein the compensation payable under Section 2 thereof may be awarded in favour of the representatives of the deceased who are entitled to succeed to the estate of the deceased. The third group of cases are those referred to in para 7 of the judgment of the Gujarat High Court. They are ***Mohmammed Habibullah v. K. Seethammal, AIR 1967 Madras 123; Veena Kumari Kohli***

v. Punjab Roadways, 1967 Acc CJ 297 (Punj) and ***Smt. Ishwari Devi Malik v. Union of India, AIR 1969 Delhi 183*** which take the view that a claim for compensation arising out of the use of a motor vehicle would be exclusively governed by the provisions of Sections 110 to 110-F of the Act and bears no connection to claims under the 1855 Act and the Claims Tribunal need not follow the principles laid down under the latter Act. Having considered all the three sets of decisions referred to above, Ahmadi, J. who wrote the judgment in Megjibhai Khimji Vira v. Chaturbhai Taljabhai, (supra) came to the conclusion that an application made by the nephews of the deceased who died on account of a motor vehicle accident was clearly maintainable under Section I 10-A of the Act.

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 Section 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 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 sometimes 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 (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 aforesaid decision, the contention of learned counsel for the Insurance Company that the claimants-brothers of the deceased, who are all major, are not entitled to compensation is baseless and is discarded.

Now coming to the question of enhancement. The deceased was 34 years aged. The contention of the claimants that the deceased was earning Rs.7000/- is meritless. There being no concrete evidence on record with regard to occupation and income of the deceased, learned Tribunal, has taken his monthly income as Rs.4500/-, which appears appropriate. The deceased was bachelor at the time of accident, therefore, learned Tribunal rightly deducted 1/2 of the income on account of living and personal expenses of the deceased. Multiplier of 15 according to the age of the deceased can be adopted as laid down in

Sarla Verma and others vs. DTC and another 2009 ACJ 1298. The claimants are brothers, therefore, they are not entitled to any amount under the head of loss of love and affection.

In the above premise, the award passed by learned Tribunal warrants no intervention and accordingly, both the appeals are dismissed.

9.2.2016 **(SNEH PRASHAR)**
gsv **JUDGE**