

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

FAO No.1901 of 2016(O&M)

Date of Decision: August 10, 2016

National Insurance Company Limited

...Appellant

Versus

Paramjit Singh and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr.Swatantar Kapoor, Advocate for
the appellant – Insurance Company.

HARINDER SINGH SIDHU, J.

CM No.7207-CII of 2016

Civil Misc. Application is allowed.

For the reasons mentioned in the application, delay of 68 days
in filing the appeal is condoned.

Main case

National Insurance Company Limited has filed the present
appeal against the Award dated 13.10.2015 of the Motor Accident Claims
Tribunal, Patiala (for short 'the Tribunal'), whereby, a sum of ₹7,08,200/-
along with interest was ordered to be paid as compensation for the death of
Kulwant Singh in a vehicular accident on 6.12.2014.

Brief facts of the case are that on the fateful day, Kulwant Singh
(deceased) was coming to his house on Hero Honda motorcycle bearing
registration No.PB-11-AZ-0977 after performing the Akhand Path Sahib in
Gurudwara Patshahi Nauvi Bahadurgarh. He was being followed by his son
Paramjit Singh on his Activa scooter. At about 10.15 p.m, when the

deceased reached near Chaman Hospital on Seel road, a swift car bearing registration No.PB-65S-3008 being driven rashly and negligently by Suneet Kumar, came from Ghanaur side at a very high speed, without blowing horn and struck against the motorcycle of deceased Kulwant Singh. As a result of the accident, Kulwant Singh received grievous injuries on his head and other parts of his body. On the way to Rajindra Hospital, Patiala, he succumbed to the injuries. FIR No.242 dated 7.12.2014 for offences under section 279, 304-A of the Indian Penal Code was registered in police station Sadar Patiala on the basis of statement of Paramjit Singh.

The legal representatives of the deceased filed claim petition under Section 166 of the Motor Vehicles Act, 1988 pleading that the deceased was aged about 50 years, working as Granthi in Gurudwara Patshahi Nauvi, Bahadurgarh and earning ₹25,000/- per month from that avocation.

Upon notice, respondents – driver and owner of the offending vehicle filed joint written statement, pleading that no accident had been caused by their swift car, rather the accident had taken place with a *rehri* on which a person was selling ground nuts. The appellant-insurer filed separate written statement objecting to the claim petition on the ground that the driver of the offending car was not holding a valid driving license.

Pleadings of the parties led to the framing of following issues:-

“1. Whether Kulwant Singh son of Kartar Singh had suffered injuries in motor vehicular accident which took place on 6.12.2014 at about 10.15 p.m on seal road, Bahadurgarh due to rash and negligent driving of swift car bearing registration No.PB-65-S-3008 by respondent No.1 Suneet Kumar to which he succumbed? OPP

2. *Whether the claimants are entitled to recover any amount of compensation, if so to what amount and from whom? OPP*
3. *Whether respondent No.1 was not having a valid and effective driving licence at the time of accident, if so its effect? OPR-8*
4. *Whether the terms and conditions of the insurance policy were violated, if so its effect? OPR-8*
5. *Relief.”*

Issue No.1 was decided in favour of the claimants and it was held that the accident had taken place due to rash and negligent driving of swift car bearing No.PB-65-S-3008 by respondent Suneet Kumar. In the absence of proof of income of the deceased, the Tribunal assessed his income at ₹8100/- per month and then considering the number of dependants (2) deducted 1/3rd towards his personal and living expenses. After applying the multiplier of 9, total loss of dependency was assessed at ₹5,83,200/- (5400x12x9). Besides, ₹1,00,000/- for 'loss of love and affection' and ₹25,000/- for 'funeral expenses' were also awarded.

Challenging the Award, Ld. Counsel for the appellant- insurer has contended that the claimants are the major and married sons of the deceased and thus, they could not be treated as dependants on the income of the deceased. Consequently, they are not entitled to any compensation on account of loss of dependency. Reliance has been placed on two decisions of this Court in **Kashmir Kumar and others Vs. Mohan Singh and others 2014(2) PLR 13** and **Narender Nayyar Vs. Sheodan Singh and ors 2014(4) PLR 286**. It is also contended that as per the Ration Card issued on 25.7.2011 (Exhibit R-1), the age of the deceased was 58 years, which means that at the time of death i.e. on 6.12.2014, he was more than 61 years old.

Therefore, proper multiplier for assessment of the loss of dependency was '7' and not '9', as applied by the Tribunal.

To deal with the first contention, it is apt to refer to the provisions of Section 166(1) of the Motor Vehicles Act, 1988, which specifies as to who can file an application for compensation. It reads:

“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.”

A perusal thereof makes it clear that all or any of the legal representatives of the deceased may file application for compensation before the Tribunal. In this regard, no distinction is made between a major or minor and those dependant or not dependant on the income of the deceased. Further, as per the proviso, where all the legal representatives of the deceased have not joined in filing the application for compensation, the application shall be made on behalf of or for the benefit of all the legal

representatives of the deceased. The legal representatives, who have not joined in filing the application, are required to be impleaded as respondents to the application.

The issue as to who is entitled to claim compensation under the Motor Vehicles Act has been considered by different High Courts as well as the Hon'ble Supreme Court.

The Hon'ble Supreme Court in **Gujarat State Road Transport Corporation, Ahmedabad v. Ramanbhai Prabhatbhai, 1987(3) SCC 234**, while examining the matter in depth under the Act of 1939, by referring to various decisions on the issue, held that the term 'legal representative' in Section 110-A of the Act has to be given a wider meaning and it cannot be confined to the spouse, parent and children of the deceased. Every legal representative who suffers on account of the death of a person due to a motor vehicle accident should have a remedy for realization of compensation and that is provided by Section 110-A to 110-F of the Act. A brother or sister of the deceased would also be included. It was observed 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 ***Mohammed 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 110-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.

14. *We have carefully gone through the decision of the High Court of Madhya Pradesh in Budha v. Union of India, (supra). We feel that the view taken in that decision is a narrow one and does not give full effect to the object with which Sections 110-A and 110-B of the Act were enacted. We overrule the said decision.*

15. *Before concluding we may add that although the Act was extensively modified after the receipt of the report of the Law Commission, Parliament did not choose to amend Section 110-A of the Act by defining the expression 'legal representatives' in relation to claims under Chapter VIII of the Act as 'the spouse, parent and children of the deceased' as recommended by the Law Commission. The Law Commission had observed in its 85th report that it would be appropriate to assign to the expression 'legal representative' the same meaning as had been given to the expression 'representative' for the purposes of the Fatal Accidents Act, 1855 and that would effectively carry out the purpose of social justice underlying Chapter VIII of the Act, to which the Fatal Accidents Act, 1855 was the nearest approximation. **This recommendation was made after referring to the divergent views expressed by the various High Courts on the meaning of the expression 'legal representatives' in Section 110-A of the Act. The fact that Parliament declined to take any action on the recommendation of the Law Commission of India suggests that Parliament intended that the expression 'legal representative' in Section 110-A of the Act should be given a wider meaning and it should not be confined to the spouse, parent and children of the deceased.***

The Allahabad High Court in **Oriental Insurance Company Ltd., v. Naresh Chandra Agarwal and others, 2000 ACJ 931**, following the *Gujarat State Road Transport Corporation's case (supra)*, confirmed the award of the Tribunal holding that the Legal Representatives including the brother of the deceased is entitled to claim compensation.

Similar was the view of a Division Bench of Karnataka High

Court in **Managing Director, K.S.R.T.C., v. Venkataramappa K.S., (2003) ACC 457 : 2002(2) KantLJ 345.** In the said case, the deceased was an agricultural labourer and there was no Class I heir. A claim for compensation was made by the married sisters and brother. Before the Tribunal, an objection was raised by the Transport Corporation that the claimants were not the dependents on the deceased and therefore, they were not entitled to make a claim for compensation. However, the Tribunal awarded compensation for loss of dependency (by deducting one third amount towards personal expenses) in addition to the compensation under the conventional damages. Aggrieved by the same, the State Transport Corporation preferred an appeal to the High Court, reiterating the said averments. The High Court framed the following questions for consideration:-

"(1) Whether the brothers and sisters of the deceased can maintain a claim petition even though they were not depending upon the income of the deceased for their maintenance?"

"(2) Whether the compensation awarded by the Tribunal is on the excessive side?"

Following the judgment of the Hon'ble Supreme Court in *Gujarat State Transport Corporation's case, (cited supra)* and taking note of Section 8 of the Hindu Succession Act, it was held that the claimants, viz., brothers and sisters, who are Class-II heirs, as per Hindu Succession Act, would be entitled to maintain a claim.

In **Managing Director, Tamil Nadu State Transport Corporation Ltd., v. M.Shanthi, 2010 CIJ 374 Mad (2),** the objection of the Transport Corporation that a married brother/sister cannot maintain a

claim petition was rejected by the Madras High Court observing as under:-

“22. Insofar as the contention that the claimants are not dependents of the deceased, this Court is of the considered view of this Court that when a claim petition is made by a married son or daughter, or in the absence of any other Class-I heir and if the claimants adduce evidence that they are the legal representatives and that the deceased during his lifetime, had contributed a portion of his income to them and if the said contention is disputed, it is the burden of the objector to lead strong rebuttal evidence to dislodge the claim of dependency. If the contention of contribution by the deceased to the legal representatives is not rebutted by any acceptable evidence, the inevitable conclusion of the Tribunal should be in favour of the claimants. In view of the judgments and for the reasons stated supra, the award made in favour of the married sisters and others, cannot be said to be without any legal principles and this Court is not inclined to interfere with the decision of the Tribunal.”

The Madras High Court held that if the married son or daughter make a claim or adduce evidence that the deceased during his life time had contributed a portion of his income to them, a heavy onus lies on the objector to dislodge the claim of dependency. If such a claim is not rebutted by acceptable evidence, the Tribunal should conclude in favour of the claimants.

The question as to whether major sons living separately from the deceased and not dependent on him could claim compensation was again considered by the Madras High Court in **The Managing Director vs Periyapatty and others, 2014 SCC Online Mad. 8794**. The High Court having considered numerous judgments of various High Courts as also of the Hon'ble Supreme Court including *Gujarat State Transport Corporation's case, (supra)*, observed as under:-

“10. Though the learned counsel for the State Transport Corporation, made a submission that except the husband, sons and daughters are not entitled to compensation, this Court is

not inclined to accept the said contention for the reason that the issue as to whether married sons and daughters are entitled to claim compensation, has been considered by this Court in the Branch Manager, M/s. National Insurance Co. Ltd., v. Tmt.Sumathi and others reported in 2012 AAC 2965, wherein this Court at paragraphs 25 to 28 and 34, held as follows:-

"25. 'Legal Representative' ordinarily includes heirs as well as persons, who represent the estate of the deceased person or a person, on whom, the estate devolves on the death of an individual. Right to claim for compensation by any or all legal representatives under Section 166 of the Motor Vehicles Act is a legal right. It is an assertable right enforceable before Courts and administrative agencies, in its wider sense and therefore, a legal right has to be understood, as any advantage or benefit conferred upon a person by a rule of law; and having regard to the manner, in which, a provision has to be interpreted, as held by the Supreme Court in the decisions stated supra, this Court is of the view that the definition of legal representatives cannot be restricted to exclude married daughters/sisters, from making any claim under Section 166 of the Act and consequently, restrict their claim, only under Section 140 of the Act, which has been engrafted in the statute, with a specific object of compensating all the legal representative, whether there is negligence, on the part of the deceased or not. It is a "No Fault Liability" clause.

26. Courts have consistently held that what has been specifically excluded by a legislation in a provision cannot be imported into the section by the decisions of Court. By engrafting Section 166 of the Motor Vehicles Act, enabling all the legal representatives to make a claim, in contra distinction to, Section 2(1)(d) of the Workmen's Compensation Act, which enables only the persons enumerated in the said section to claim compensation under Section 3 of the Workmen's Compensation Act, the intention of the legislature is clear and the definition, "legal representative" cannot be narrowed down to mean only "dependents", excluding married daughters/sisters.

27. There could still be a case where there is contribution of a portion of the income of the deceased to a legal representative, who had preferred a claim and he/she would not be wholly dependent on the income of the deceased. A likelihood of loss of contribution from the deceased would give rise to a claim for compensation

by him under Section 166 of the Motor Vehicles Act, though he may not be a wholly dependent, as defined in Section 2(1)(d) of the Workmen's Compensation Act.

28. It is a well recognised rule of interpretation of statutes that the expressions used in the statute, should ordinarily be understood, in which, they harmonise with the object of the statute and which effectuate the objection of the legislature and the Court should adopt an object oriented approach, keeping in mind the language employed in the statute. When the legislature has used the words, Legal Representatives in Section 166 of the Act, and having regard to the duty of the Court to act upon the true intention of the legislature, Mens or Sententia Legis, this Court is not inclined to accept the submissions of the Insurance Company, intrepret and circumscribe the meaning of the words, Legal Representatives to mean only dependents. Just because a brother or sister is married, the right to represent the estate of the deceased is not taken away and such an interpretation, would make the provisions of law of succession, ineffective.

.....

34. Limiting the payment of compensation to some of the legal representatives, as per Section 140 of the Act, to the exclusion of others, would amount to violation of Article 14 of the Constitution of India. In the light of the above, the contention that the married daughters are entitled to only compensation under Section 140 of the Motor Vehicles Act, under No Fault Liability claim of Rs.50,000/- alone cannot be countenanced. If the submissions of the learned counsel for the appellant-Insurance Company are to be accepted, then it would be introducing a bar or prohibition against a married daughter to prefer a claim under Section 166 of the Motor Vehicles Act, which apparently is not the intention of the legislature. Monetary dependency is not the only factor to award compensation to the legal representatives.”

*32. In **United India Insurance Company vs. Kasiamma**, reported in 1997 (III) CTC 346, one of the contentions raised therein, challenging the award, was that a married son, who was living separately and not a dependant, is not entitled to claim compensation. The short question framed by this Court, at Paragraph 6 of the judgment, was whether the claimants, who were married sons and married daughters, entitled for*

compensation? While addressing the abovesaid question, a learned Judge has considered two decisions relied on by the appellant-Insurance Company therein in Revanben v. Kantibhai Narottamehai Gohil reported in 1995 ACJ 548 and U.P.State Road Transport Corporation v. Tara Devi, reported in 1995 ACJ 1220 and also the decisions of the Apex Court in Bhagwatidin v. Gheesalal reported in 1980 ACJ 116, Gujarat State Road Transport Corporation, Ahmedabad v. Ramanbhai, reported in AIR 1987 SC 1690 and Pushpam v. Nirmala, reported in 1991 TLNJ 101, and at Paragraphs 15, 16 and 17, held as follows:

“15. As pointed out earlier, the compensation amount is being paid to the legal representatives on account of untimely death of their ancestor. The dependency of the legal representatives is a question to be considered and does not mean only the dependents can claim compensation. The compensation being the amount for the loss to the estate of the deceased, it has to be considered as to whether the legal representatives had been put to loss because of the death of the deceased. Wherever the deceased is an earning member, naturally his savings is an accumulation for the estate which can be divided by the legal representatives after the death of the deceased. As the legal representatives had been put to loss of the earning of the deceased, the legal representatives are also entitled for the compensation”

It was held that wherever the deceased is an earning member, his savings is an accumulation for the estate which can be divided by the legal representatives after the death of the deceased. As the legal representatives in such a case are put to loss of the earning of the deceased, the legal representatives are also entitled for the compensation.

From all these decisions, it can be safely concluded that a legal representative who is entitled to inherit the estate of the deceased, even if he is not wholly dependent on the deceased, would be entitled to compensation.

The decisions relied on by the Ld. Counsel for the appellant namely **Kashmir Kumar and others** and **Narender Nayyar Vs. Sheodan Singh and ors** (supra) have only decided on the quantum of compensation in those cases, without any reference to the statutory provisions or their interpretation or any principle of law in relation to the question in issue in this case. Hence, they cannot be treated to be laying down any law on the question that major married sons cannot be awarded compensation.

Thus, in view of various decisions as also having regard to the plain language of the provisions of Section 166 of the Act, I do not find any substance in the argument of the appellant that the respondents, the major married sons of the deceased, who may also have independent income are not entitled to compensation. Of course, in a case where the claimants include parents, widow and both minor and major children, the fact that a child is major and married and has his own source of income would necessarily be taken into consideration while apportioning the compensation among the various claimants. The minor children and widow would necessarily be entitled to a major share of the compensation. In such cases, depending on the facts and evidence, the Tribunal may be justified in awarding only token compensation or even wholly denying compensation to a major and married son having sufficient independent income of his own. However, no such question arises in this case as both the claimants are major and married. Further, as against their claim that they were dependent on the income of the deceased, no evidence was led by the appellant in rebuttal.

The compensation has been assessed applying the ratio of the

decisions of Hon'ble the Supreme Court in **Smt. Sarla Verma and ors. Vs. Delhi Transport Corporation and anr. 2009(3) RCR 77** and **Rajesh and ors Vs.Rajbir Singh and ors. 2013 ACJ 1403**. I see no infirmity in the same.

Coming to the second argument regarding the age of the deceased, there are two documents regarding the age of the deceased Kulwant Singh. One is the post mortem report (Exhibit A6), wherein, his age is mentioned as 50 years, while on the Ration Card (Exhibit R1) his age is recorded as 58 years. In the claim petition, the age of the deceased is mentioned as 50 years. Contention is that since the ration card was issued in 2011, therefore, at the time of accident in 2014, the deceased must have been of about 61 years.

In considered opinion of this Court, the Ration Card cannot be taken as a conclusive proof of age. If both the documents (Exhibit A6 and R1) are considered cumulatively, the finding of the Tribunal that the deceased was aged about 58 years at the time of death, cannot be termed as faulty.

No other point was raised.

Appeal dismissed.

August 10, 2016

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**(HARINDER SINGH SIDHU)
JUDGE**

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No