IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.6443 of 2013(O&M)
Date of Decision:03.11.2016

Rajinder Kumar and another **......Appellants**
Versus
Shri Manpreet Singh and others **.....Respondents**

CORAM: ***HON'BLE MR. JUSTICE RAJ MOHAN SINGH***

Present: Ms. Ekta Thakur, Advocate
for the appellants.

Ms. Amandeep Kaur, Advocate
for respondent No.2.

Mr. Eklavya Darshi, Advocate
for respondent No.3.

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RAJ MOHAN SINGH, J.

[1]. Appellants/claimants have filed this appeal against the award dated 23.10.2013 passed by Motor Accident Claims Tribunal, Chandigarh whereby claim was dismissed in toto.

[2]. Accident took place on 13.12.2012 when Ramsharan Dass (since deceased) was going on the road of Sector 23, Chandigarh on his correct side. Respondent No.1 by driving offending vehicle in a rash and negligent manner came from the side of market of Sector 23, Chandigarh and without blowing any horn, hit Ramsharan Dass. Ramsharan Dass fell down and received multiple grievous injuries on vital parts of the body,

including head injuries. He was removed to Government Hospital, Sector-16, Chandigarh, but ultimately he succumbed to the injuries on the same day. FIR was registered against the driver of the offending vehicle. The deceased was 70 years of age at the time of accident and was an Ice Seller by profession. The income of the deceased was claimed to be Rs.7000/- per month. The claimants are the sons of the deceased who claimed themselves to be dependent upon the deceased. With this background, claim petition came to be filed.

[3]. After due contest and leading evidence on record, Motor Accident Claims Tribunal, Chandigarh held that the accident in question took place due to rash and negligent driving of the driver of the offending vehicle. The age of the deceased was found to be 85 years. For want of evidence in respect of income of the deceased, it was held that keeping in view the age of the deceased, the income of the deceased was assessed to be Rs.5000/- per month. While dealing with the dependency of the claimants upon the deceased, the Tribunal found the age of appellant No.1 to be 52 years and age of appellant No.2 to be 40 years, therefore, they were not treated to be dependent upon deceased Ramsharan Dass.

[4]. As per statement of appellant No.1, he himself admitted in his cross examination that he is a Fari Vendor in Sector 22,

Chandigarh and he is earning. Appellant No.2 was found to be a Security Guard against the salary of Rs.5500/- per month. The Tribunal ultimately found that the claimants were not the dependent upon deceased Ramsharan Dass in any manner and dismissed the claim petition in toto.

[5]. I have heard learned counsel for the parties.

[6]. Learned counsel for the appellants has submitted that legal representatives are the persons who have suffered on account of death of the deceased. They are not necessarily to be wife, husband, parent or child. Even if, there is no loss of dependency, the claimants being legal representatives are entitled to compensation and the quantum of which shall not be less than the amount meant for loss of estate.

[7]. Learned counsel relied upon ***Smt. Manjuri Bera Vs. The Oriental Insurance Company Ltd., 2007(2) RCR (Civil) 675, Vinay Luthra Vs. Verma Transport Company and others, 2014(4) PLR 674, Narender Singh Vs. Sudharshan Kumar, 2004(110) DLT 461, Chamansab Vs. Parappa, 2008 ACJ 321*** and ***Gajanand Vs. Virender Singh, 2010 ACJ 145*** to contend that loss of estate cannot be withered away only because claimants are major and earning members. Even if, claimants are not found to be dependent, but certainly for lack of guidance of the parents, they are entitled for compensation as

the lack of guidance would have an impact on their working skills. Loss of love and affection and guidance from the parents and deprivation of companionship would certainly make them entitled for an assessment of amount under lawful criteria.

[8]. Learned counsel also contended that in view of ratio laid down in ***Montford Brothers of St. Gabriel and another Vs. United India Insurance and another, 2014(1) RCR (Civil) 884***, term legal representative cannot be construed in a narrow compass. The term legal representative has not been defined under the act. In ***Gujarat State Road Transport Corporation, Ahmedabad Vs. Raman Bhai Prabhatbhai and another, AIR 1987 SC 1690*** held in the following manner:-

> "*11 Learned counsel for the Insurance Company tried to persuade us that since the term 'legal representative' has not been defined under the Act, the provision of Section 1A of the Fatal Accidents Act, 1855, should be taken as guiding principle and the claim should be confined only for the benefit of wife, husband, parent and child, if any, of the person whose death has been caused by the accident. In this context, he cited judgment of this Court in the case of* **Gujarat State Road Transport Corporation, Ahmedabad V. Raman Bhai Prabhatbhai and anr., AIR 1987 SC 1690**. *In that case, covered by the Motor Vehicles Act of 1939, the claimant was a brother of a deceased killed in a motor vehicle accident. The Court rejected the contention of*

the appellant that since the term 'legal representative' is not defined under the Motor Vehicles Act, the right of filing the claim should be controlled by the provisions of Fatal Accident Act. It was specifically held that Motor Vehicles Act creates new and enlarged right for filing an application for compensation and such right cannot be hedged in by the limitations on an action under the Fatal Accidents Act. Paragraph 11 of the report reflects the correct philosophy which should guide the courts interpreting legal provisions of beneficial legislations providing for compensation to those who had suffered loss.

> "*11. 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 realization of compensation and that is provided by Sections 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 and 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 some times 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, (AIR 1977 Guj. 195)** *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."*

The applicability of provisions of Fatal Accidents Act, 1855 on the term of legal representative was diluted in the manner as suggested in the aforesaid precedent.

[9]. In ***New India Assurance Co. Ltd. Vs. Kuldeep Singh and others, 2016 (2) RCR (Civil) 154***, major sons and daughters of the deceased were held entitled to claim

compensation. It was held that when the assessment is made on the basis of dependency, the loss of estate which is one of the head of claim becomes merely a conventional head of the claim to be satisfied. When the sons and daughters are major and are not dependents, the loss of estate could become considerable for them. They are legal heirs to the estate of father. If the deceased could have earned and left an estate that could have been inherited by the children, then such earned estate should be qualified as an amount payable to sons and daughters who are major and not dependent. In the aforesaid case, deceased was 55 years of age and would have earned for the rest of his productive life and would have made possible an accrual to an estate that could have fallen in the hands of legal heirs. Even if, the claim was not sustained qua the loss of dependency, but the same was held justified for loss of estate. ***Smt. Manjuri Bera (supra)*** was distinguished in the aforesaid ratio.

[10]. In ***Charanjit Kaur Vs. Suresh Kumar and others, 2014(3) RCR (Civil) 908***, it was held that even in case of fatal motor accident, married sister of deceased who was not dependent upon the deceased was entitled to file claim petition in respect of death of her brother.

[11]. Since the assessment has to be made on the basis of

dependency, loss of estate which is one of the head of the claim becomes merely a conventional head of claim to be satisfied, but when the claimants are major and are not dependent, loss of estate would become considerable for these major sons who are legal heirs of the deceased. If the deceased would have earned the amount during his lifetime, he would have left an estate which could have been inherited by the claimants. Even though, loss of estate is merely a conventional head of claim, when assessment is made on the basis of dependency, but when claimants are major, loss of estate would become considerable for the claimants as the deceased would have earned for the rest of his productive life for the benefit of heirs like major sons. The computation of amount has to be made by presuming the deceased to be alive for certain period during which he could have earned and left the same as an estate for the claimants.

[12]. Since the Tribunal has not adverted to the aforesaid aspect of the case, therefore, it would be just and appropriate to call upon the Tribunal to give findings on the aforesaid proposition. Non-dependent legal heirs would be entitled to actual loss of estate and not the notional loss of estate. Since the impugned award is silent on this aspect of the matter, therefore, it would be just and appropriate to obligate the

Tribunal to give findings on this aspect and decide the case afresh on the basis of assessment of the evidence.

[13]. In view thereof, the impugned award dated 23.10.2013 passed by Motor Accident Claims Tribunal, Chandigarh is set aside. Appeal is allowed. Case is remanded to the Motor Accident Claims Tribunal, Chandigarh with a direction to make necessary assessment of evidence and return findings in the light of observations made hereinabove.

03.11.2016 **(RAJ MOHAN SINGH)**
Prince **JUDGE**

Whether Reasoned/Speaking Yes/No

Whether Reportable Yes/No