IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.4900 of 2016(O&M)
Date of Decision-09.12.2016

New India Assurance Company Ltd. ... Appellant

Versus

Hardeep and others ... Respondents

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

Present: Ms. Vandana Malhotra, Advocate for the appellant.

Mr. Ashwani Bakshi, Advocate
for respondents No.1 to 3.

None for respondent No.4.

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RAJ MOHAN SINGH, J.

[1]. This is an appeal filed by the Insurance Company against the award dated 28.04.2016 passed by Motor Accident Claims Tribunal, Rohtak (for short 'Tribunal') whereby the claim petition filed by the claimants/respondents No.1 to 3 was allowed along with interest.

[2]. Accident took place on 14.08.2015 when deceased Birender along with his friend namely Vikas was going to his house on the motorcycle of Vikas. Motorcycle was being driven by Vikas,

when they reached near Sunaria Water Works, Jhajjar, the offending car which was being driven rashly and negligently by driver-respondent No.4 struck against the motorcycle. Both the occupants of motorcycle received grievous injuries. Birender Succumbed to the injuries. FIR No.304 dated 15.08.2015 was registered. The claimants staked their claim to the tune of Rs.50,000/- on account of death of Birender due to aforesaid vehicular accident. Vikas also filed a claim petition on account of injuries sustained by him.

[3]. Tribunal found that the accident in question took place on account of rash and negligent driving of driver of the offending vehicle. Deceased Birender was 25 years of age at the time of accident. In the absence of any strict proof of income, his income was calculated to be Rs.9000/- per month as that of daily wages. In view of ratio laid down in ***Rajesh and others Vs. Rajbir Singh and others, 2013(3) RCR (Civil) 170*** , an addition to 50% of the income towards future prospectus was made, therefore, income of the deceased was assessed to be Rs.13,500/ per month. The annual income of the deceased was assessed to be Rs.1,62,000/-. Deceased Birender was unmarried, therefore, deduction to the extent of 50% was applied and the dependency was calculated to be Rs.81,000/- per annum.

[4]. In view of ratio laid down in ***Vimal Kanwar and others Vs. Kishore Dan and others, 2013(2) RCR (Civil) 945***, multiplier of

18 as per age of the deceased was applied and the total amount was calculated to the tune of Rs.14,58,000/-. An amount of Rs.1,00,000/- towards loss of love and affection and an amount of 25,000/- towards funeral expenses were added. In this way, total amount was assessed to be Rs.15,83,000/-.

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

[6]. Learned counsel for the appellant vehemently contended that the claimants are married sisters and brother of deceased, therefore, they cannot be treated to be dependent upon income of deceased-Birender. Secondly, the income of Rs.9000/- per month is the excess amount even as per daily wage notification dated 13.02.2015. Thirdly, addition of 50% towards future prospectus is not at all warranted, keeping in view the facts and circumstances of the case. Learned counsel for the appellant in order to support her contention relied upon ***Smt. Manjuri Bera Vs. The Oriental Insurance Company Ltd, 2007(2) RCR (Civil) 675*** and contended that a legal representative is the person who has suffered on account of death of the deceased in a vehicular accident. He is not necessarily to be wife, husband, parent or child. Even if, there is no loss of dependency, the claimant if is a legal representative will be entitled to compensation, the quantum of which shall not less than the liability flowing from Section 140 of the Motor Vehicles Act.

[7]. In nutshell, impugned award has been assailed on the premise that the married sisters and brother are not entitled to the

claim above the quantum meant under Section 140 of the Motor Vehicles Act. The cited case was under Section 140 of the Motor Vehicles Act as is evident from para No.17 of the judgment.

[8]. Learned counsel further relied upon ***Vinay Luthra Vs. Verma Transport Company and others, 2014(4) PLR 674*** to contend that the claimants are not entitled to any loss of dependency, but are entitled to loss of estate. In the aforesaid case, deceased were the parents and brother of the injured claimant. Deceased were income tax assessees. Claimant was a student. The claimant was not held to be dependent throughout his life, but certainly for lack of guidance of his parents in the initial years of his youth was held to be sufficient to have an impact on his working skills for earning and getting maturity in life. For loss of love and affection and guidance from the parents and deprivation of companionship, the amount was assessed i.e. Rs.1,00,000/- each for parents and 50% for the brother. For calculating the dependency, multiplier was also applied. In support of her contention, learned counsel for the appellant also relied upon ***Narender Singh Vs. Sudharshan Kumar, 2004(110) DLT 461, Chamansab Vs. Parappa, 2008 ACJ 321*** and ***Gajanand Vs. Virender Singh, 2010 ACJ 145.***

[9]. On the other hand, learned counsel for the respondents has vehemently submitted that findings recorded by the Tribunal on the aspect of income was on account of incorrect appreciation of

evidence. The photo of the shop was on the record and the monthly income of the deceased from bill book which he was maintaining came out to be Rs.13,000 to 14,000/- per month. The income was pleaded to be Rs.20,000/- from all resources. As per D.C rate of Rohtak even for a tailor master, D.C rate was Rs.10,200/-. The shop of the deceased was in the village.

[10]. Learned counsel contended that minimum wage is not a yardstick for assessing the income of the person. Reliance has been placed on ***Jakir Hussein Vs. Satbir and others, 2015(2) RCR (Civil) 141.*** Learned counsel further contended that appeal filed by the claimants has not been listed so far. Learned counsel for the respondents further contended that as per instructions dated 09.06.2016 issued by the Deputy Commissioner, Rohtak, wages of Tailor Master per month are Rs.10,200/- at the daily wage of Rs.392/-.

[11]. In view of ***Jakir Hussein case (supra),*** the notification of minimum wages is only a yardstick and not an absolute factor to be taken into consideration for determining the compensation under the future loss of income. The minimum wage may at times fail to meet the requirements that are needed to maintain the basic quality of life. Minimum wage is not an inclusive factor of cost of living index.

[12]. 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.

[13]. 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.

[14]. Learned counsel further relied upon ***Charanjit Kaur Vs. Suresh Kumar and others, 2014(3) RCR (Civil) 908*** to contend

that even in case of fatal motor accident, married sister of deceased who was not dependent upon the deceased is entitled to file claim petition in respect of death of her brother.

[15]. Having considered the controversy, I am of the view that the income of deceased Birender has been rightly assessed to be Rs.9000/- per month keeping in view the notification issued by the Deputy Commissioner, Rohtak wherein Tailor Master is shown to be earning an amount of Rs.10,200/- per month as per daily wages prevailing in the area. The amount cannot be assessed to be on higher side, keeping in view the plea and evidence of the claimant showed as per bill book which he was maintaining in respect of his Tailoring shop. The amount of income would have given even on higher side. Since the appeal of the claimant is also pending, this Court refrain from giving any definite opinion with regard to the income above Rs.9000/- at this juncture, lest it may prejudice the case of any party at a later stage. Even otherwise, the appeal is on behalf of Insurance Company, therefore for the purposes of just decision of the present case, there cannot be any acceleration in the income of the deceased beyond Rs. 9000/- at this stage, however subject to any decision likely to be given in the appeal filed by the claimants. Minimum wage cannot be considered to be a yardstick in view of ***Jakir Hussein case (supra)***.

[16]. In view of ratio laid down in ***Rajesh and others Vs. Rajbir Singh and others*** case (supra), the addition towards future

prospectus is a lawful exercise keeping in view the source of income of the deceased. The question which needs to be answered is whether the amount of dependency so calculated would be accrual of the amount towards loss of estate. Claimants are major and may not be dependent, loss of estate would become considerable to the claimants. Since the assessment is made on the basis of dependency, loss of estate which is one of the head of claim becomes mere a conventional head of claim to be satisfied, but when the claimants are major and are not dependent, the loss of estate would become considerable for these major sons and daughters which are legal heirs of deceased. If the deceased would have earned the amount as calculated during his lifetime, he would have left an estate which could have been inherited even by the claimants. The observations made ***in New India Assurance Co. Ltd. Vs. Kuldeep Singh and others case (supra)*** are very near to the reality. 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 could 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 claimants. 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.

[17]. In view of observations made in ***Montford Brothers of St. Gabriel and another case (supra)*** and ***Gujarat State Road***

Transport Corporation, Ahmedabad case (supra), I am of the view that the provisions contained in Fatal Accidents Act are not attracted. The ratio laid down in ***Smt. Manjuri Bera case (supra)*** is distinguishable firstly on the ground that the said case was related to provisions in terms of Section 140 of Motor Vehicles Act. Secondly, in view of observations made in ***New India Assurance Co. Ltd. Vs. Kuldeep Singh and others case (supra),*** the amount calculated on account of death of Birender can be considered to be loss of estate which becomes considerable for the legal heirs.

[18]. In ***Charanjit Kaur Vs. Suresh Kumar and others case (supra)***, it was culled out from interpretation given in ***Smt. Manjuri Bera case (supra), A. Manayalagan Vs. A. Krishnamurthy, 2005 ACJ 1992*** and ***Gobald Motor Service Vs. R.M.K. Veluswami, (1962) 1 SCR 929*** that a distinction between Sections 1 and 2 of Fatal Accidents Act has to be made that (Section 1-A and 2 after amendment) under Section 1(1-A) damages are claimed for the benefit of persons mentioned therein and under Section 2, the compensation goes to the benefit of the estate. Under Section 1-A damages are payable in respect of the loss sustained by the persons mentioned therein and under Section 2 damages can be claimed for loss of expectation of life as well as loss to the estate. The person who is claiming benefit under Sections 1 and 2 may not be the same as the claimants under the said sections are based on different causes of action. In case of both loss of dependency and loss of estate, compensation would be worked out on the basis of

income of the deceased, but depending upon the facts of the case, the amount of expenses would be different. For instance, an unmarried person may spend more amount on himself than the married man having two or three dependent children. The non-dependent legal representatives would be entitled to actual loss of estate and not to the notional loss of estate.

[19]. From the aforesaid propositions, culminated issue has arisen that married sons and daughters may not be dependent, but they are legal representatives/heirs of the deceased. In case of assessment made on dependency, loss of estate may be merely a conventional head of claim to be satisfied, but in case of major claimants who are not dependent, a loss of estate would become considerable. Non-dependent legal heirs would be entitled to actual loss of estate and not the notional loss of estate. The amount awarded is silent about aforesaid classifications based on actual loss of estate suffered by the claimants.

[20]. The impugned award is totally silent on the aforesaid propositions. It would be just and appropriate to obligate the Tribunal to give findings on these aspects of the case and decide the claim afresh on the basis of assessment of evidence.

[21]. In view of reasons as mentioned above, this appeal is accepted and the impugned award dated 28.04.2016 passed by the Motor Accident Claims Tribunal, Rohtak is set aside. Case is

remanded to the Tribunal to make fresh assessment of evidence in the light of observations made hereinabove.

09.12.2016 **(RAJ MOHAN SINGH)**
Prince **JUDGE**

Whether reasoned/speaking Yes/No

Whether reportable Yes/No