

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

FAO No.5001 of 2016 (O&M)

Date of decision : 31.08.2016

United India Insurance Company Ltd.

.....Appellant

Versus

Devender Kumar and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Suman Jain, Advocate for appellant.

DARSHAN SINGH, J.

The present appeal has been preferred by the appellant-Insurance Company against the award dated 04.05.2016 passed by the learned Motor Accidents Claims tribunal, Fatehabad, whereby respondent No.1-claimant Devender Kumar and proforma respondent No.5 Puran have been awarded compensation to the tune of Rs.4,50,000/- on account of death of their brother Deepak Kumar in the motor vehicular accident which took place on 18.10.2014.

2. The appellant-Insurance Company has filed the present appeal to assail the award.

3. I have heard learned counsel for the appellant and gone through the paper-book carefully.

4. Learned counsel for the appellant-Insurance Company contended that appellant Devender Kumar is the elder brother of the

deceased. He was not dependent upon the income of the deceased. Deceased Deepak Kumar was unmarried. His parents have already died. Thus, the claimant may only be entitled to no fault liability of Rs.50,000/- and was not entitled to the amount of compensation as determined by the learned Tribunal.

5. I have duly considered the aforesaid contentions.

6. This fact is not disputed that deceased was the brother of respondent No.1-claimant and also that of proforma respondent Puran. Claimant Devender Kumar while appearing in the witness box has categorically stated that the deceased used to run floor mill in village Jandwala Sotter, Tehsil and Distt. Fatehabad along with him and used to earn Rs.20,000/- per month. It shows that deceased Deepak Kumar was working with claimant Devender Kumar and was contributing the income to the family. As per provision of Section 166 of the Motor Vehicles Act, 1988 the legal representatives of the deceased are entitled to file the claim petition. Expression "legal representative" has been defined in Section 2(11) of the Code of Civil Procedure 1908 as under:-

“(11) **"legal representative"** means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued.”

7. As per the aforesaid definition, a person who in law represents the estate of the deceased including any person who intermeddles

with the estate of the deceased is the legal representative of the deceased. Thus, it is not necessary that the legal representative must be the legal heir. The expression legal representative includes both *i.e.* the legal heirs as well as the persons who represent the estate of the deceased.

8. In the instant case, deceased Deepak Kumar was the brother of claimant and proforma respondent No.5. He was jointly working with the claimant and contributing to the income of the family. The Hon'ble Supreme Court in case ***Smt. Manjuri Bera Vs. The Oriental Insurance Company Ltd. and another*** 2007(2) RCR (Civil) 675, laid down that a legal representative is one who suffers on account of the death of a person due to a motor vehicular accident and need not necessarily be a wife, husband, parent and child. It was further laid down that 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 be not less than the liability flowing from Section 140 of the Act. In case ***Mrs. Hafizun Begum Vs. Md. Ikram Heque and others*** 2007(3) RCR (Civil) 691, the claim petition was filed by the brothers of deceased Md. Nurul Hoque. Appellant, the widow of Md. Nurul Hoque took the plea that brothers of the deceased were not dependent upon him and had no right to file the petition. But the learned Apex Court repelled the aforesaid plea and observed that right to file the claim petition does not cease because there is absence of dependency.

9. Where a legal representative though not dependent suffers a loss to estate and is beneficiary to the estate of the deceased will certainly be entitled to the compensation. In the instant case the claimant was

certainly the beneficiary of the estate of the deceased and his death has resulted to the loss of estate. So, the brothers of the deceased were certainly entitled for grant of compensation to the loss of estate which will also include the loss of income caused to the family due to demise of the victim and other expenses incurred by the legal representatives of the deceased may be on the treatment of the deceased, the funeral and last rites, etc.

10. The learned Tribunal has awarded Rs.4,32,000/- considering the loss of dependency and Rs.18,000/- towards the funeral expenses. Total Rs.4,50,000/- have been awarded as compensation to the brothers of the deceased. The loss of dependency mentioned by the learned Tribunal can safely to be taken to be the loss of income/loss of estate caused to the brothers of the deceased on account of his death. They were also entitled for funeral expenses as they had incurred those expenses.

11. Thus, keeping in view my aforesaid discussion, the respondent No.1-claimant and proforma respondent No.4 have been rightly granted compensation by the learned Tribunal being the legal representatives of the deceased.

12. Thus, the appeal has no merits and the same is hereby dismissed.

31.08.2016

sunil yadav

**(DARSHAN SINGH)
JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No