

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

FAO No.1424 of 2011 (O&M)

Date of decision : 23.03.2017

Ved Pal and others

.....Appellants

Versus

Jagdeep and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. K.S. Dhanora, Advocate for appellants.

Mr. Ravinder Arora, Advocate for respondent No.3.

DARSHAN SINGH, J.

The present appeal has been preferred by the appellants-claimants against the award dated 16.01.2010, passed by learned Motor Accidents Claims Tribunal, Bhiwani (hereinafter called the “Tribunal”), whereby the claim petition filed by the appellants-claimants under Section 166 of the Motor Vehicles Act, 1988 (for short—the “Act”) was allowed and they have been awarded compensation to the tune of ₹88,000/- on account of death of their father Harkesh in the motor vehicular accident, which took place on 25.06.2007.

2. The present appeal has been preferred by the appellants-claimants for enhancement of award of compensation.

3. I have heard learned counsel for the parties and have gone through the record of the case carefully.

4. Initiating the arguments, learned counsel for the appellants-claimants contended that the learned Tribunal has awarded only ₹88,000/- as compensation to the claimants. He contended that the learned Tribunal has wrongly held that the appellants-claimants were not dependent upon the income of the deceased. He contended that the deceased was their father. He was a mason by profession and was earning ₹4000/- per month. He was contributing his income to the family. The accidental death of their father has resulted into the loss to estate. He contended that the claimants are the legal heirs of deceased Harkesh and will be entitled to the compensation taking into consideration the loss to estate due to death of Harkesh. The learned Tribunal has only calculated loss of dependency for a period of one year and nine months i.e. the time till Smt. Nanki Devi, the widow of Harkesh and mother of the claimants remained alive, which is a wrong approach. Thus, he contended that just amount of compensation has not been awarded by the learned Tribunal to the claimants.

5. On the other hand, Mr. Ravinder Arora, Advocate, learned counsel for respondent-Insurance Company contended that it is an admitted fact that all the claimants were the major sons of deceased Harkesh. They were not dependent upon deceased Harkesh. So, they have not suffered any loss of dependency. The learned Tribunal has awarded sufficient amount on account of loss of love and affection to the claimants. The learned Tribunal has also calculated the loss of dependency for the period during his widow Nanki Devi remained alive. Thus, he contended that the amount of compensation awarded by the learned Tribunal is just and adequate.

6. I have duly considered the aforesaid contentions.

7. The appellants-claimants are the major sons of deceased Harkesh. The learned Tribunal held that as the claimants were themselves earning hands, they cannot be stated to be dependents upon deceased Harkesh their father, rather they were supposed to maintain him as he was about 65 years of age. But at the same time, the learned Tribunal held that the deceased was earning ₹4000/- per month by working as a mason and was maintaining his wife. The learned Tribunal has calculated the loss of dependency only for a period of one year and nine months i.e. period during Smt. Nanki Devi the widow of Harkesh remained alive. The appellants-claimants have been awarded only ₹50,000/- as compensation on account of loss of love and affection.

8. The question which arises for consideration in the present appeal is as to whether the appellants-claimants who are the major sons of deceased Harkesh will also be entitled to the amount of compensation, besides only the loss of love and affection. It is not disputed that all the appellants-claimants are major sons of deceased Harkesh. They were doing labour work and were earning 100/150 rupees per day. So, it is not a case where the appellants-claimants were having very sound financial position and were not in need of any contribution to the family by their deceased father. It is an admitted fact that even if the sons are major and are earning, they do not stopped looking to their father for financial help. The sons, even if they are major, do not lose the status of legal representatives, about which a reference has been made in Section 166 (1) (c) of the Act.

Therefore, even the major sons are entitled to maintain the claim petition on account of death of their father for grant of compensation.

9. As per the findings of the learned Tribunal, the deceased was earning ₹4000/- per month by working as a mason. The learned Tribunal has determined the loss of dependency to be ₹2000/- per month. So, this loss of dependency *i.e.* ₹2000/- per month can be taken to be the loss to estate *i.e.* the contribution of deceased Harkesh to the family. Reference can be made to cases ***Manasvi Jain Vs. Delhi Transport Corporation 2014 (3) RCR (Civil) 313*** and ***The New India Assurance Company Ltd. Vs. Kuldeep Singh and others FAO No.5452 of 2012 decided on 02.08.2013.*** Similar ratio of law has also been laid down by this Court in cases ***United India Insurance Company Limited Vs. Manjit Singh and others FAO No.1276 of 2009 decided on 27.07.2010*** and ***Shri Ram General Insurance Company Ltd. Vs. Veena Chadha and others FAO No.2879 of 2013 decided on 15.01.2014.*** Thus, the annual loss to estate comes to ₹24,000/-. The learned Tribunal has mentioned that the age of the deceased was 65 years, but no definite evidence has been led by the claimants to prove the age of the deceased. It can also be more than 65, so the multiplier of 5 shall be applicable. Thus, the amount of compensation on account of loss to estate comes to ₹1,20,000/-.

10. The learned Tribunal has awarded only ₹50,000/- on account of loss of love and affection to the claimants. The appellants-claimants are three major sons of the deceased. They cannot be deprived of the adequate amount of compensation on account of love and affection

simply on the ground that they are major. It is a fact of common knowledge that in our society the father enjoys the unique position. Even the major children have love, affection and respect for their father. They also seek the guidance and advice of their father from time to time for the important matters in their life and family. So, the appellants-claimants shall be entitled to a sum of ₹1,00,000/- on account of loss of love and affection of their father. They will also be entitled to a sum of ₹25,000/- towards funeral and last rites expenses. In this way, the total amount of compensation payable to the appellants-claimants comes to ₹2,45,000/-.

11. Thus, keeping in view my aforesaid discussion, the present appeal is hereby partly allowed. The amount of compensation payable to appellants-claimants is enhanced to ₹2,45,000/- from ₹88,000/- as awarded by the Tribunal. The appellants-claimants shall also be entitled to interest on the enhanced amount of compensation at the rate as awarded by learned Tribunal, from the date of filing the petition till realisation. The liability to pay the enhanced amount of compensation and the apportionment amongst the claimants shall remain the same as determined by the learned Tribunal in the main award.

23.03.2017*sunil yadav***(DARSHAN SINGH)
JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No