

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

FAO No.1607 of 2013

Date of Decision: 09.03.2017

Jyoti Parkash

....Appellant

Versus

General Manager Haryana Roadways, Sirsa
and others

....Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Rahul Vats, Advocate
for the appellant.

Mr. P.K. Ganga, Advocate
for respondent No.2.

Mr. Rajbir Singh, Advocate
for respondent No.3.

DAYA CHAUDHARY, J.

The present appeal has been filed by appellant-Jyoti Parkash, who filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 (here-in-after referred to as `the Act, 1988) and sought compensation on account of the death of his younger brother Munish Kumar. The second claim petition under Section 166 of the Act, 1988 was filed by Janak Raj, who also sought compensation for the damage caused to his motorcycle in the accident. Both the claim petitions had arisen out of the same accident and both were decided by same award dated 15.10.2012 passed by Motor Accident Claims Tribunal, Sirsa.

Briefly, the facts of the case are that FIR relating to the accident was registered on the basis of statement of Pardeep Kumar, who

was neighbour of deceased Munish Kumar. It was alleged in the complaint that on 22.09.2009 at about 10 a.m., Pardeep Kumar was on his way back to his business premises after seeing his friend, namely, Gobind at Rania Octroi Post, Sirsa. When he reached near Ashoka Dharm Kanta near Rania Road, he saw Munish Kumar on his motorcycle. Meanwhile, the offending bus No.HR-57-1373 came from behind, which was being driven in a rash and negligent manner, struck the motorcycle, being driven by Munish Kumar and ran over it due to which the motorcycle and its occupants were dragged upto a long distance. Due to accident, the left leg of Munish Kumar was crushed and he sustained multiple grievous injuries. However, the driver of the bus ran away from the spot along with bus after the accident. Thereafter, Pardeep Kumar shifted Munish Kumar to General Hospital, Sirsa from where he was referred to higher centre for better treatment. Jai Parkash brother of Munish Kumar took him to Rohtak and then to Delhi but Munish Kumar died on the way. FIR No.585 dated 22.09.2009 was registered under Sections 279, 338, 427 and 304-A IPC at Police Station City, Sirsa, against Mani Ram, who is facing trial. Munish Kumar was 29 years of age and was working as a Muneem with M/s Jain Trading Company at Anaj Mandi, Sirsa, was earning ₹ 9,000/- per month. An amount of ₹ 3,000/- was spent on transportation. However, total amount of ₹ 6 lacs along with interest was claimed in the claim petition which was contested by the owner, driver and Insurance Company by way of filing separate written statements.

The claim petition filed by Jyoti Parkash was dismissed but the claim petition filed by Janak Raj was allowed by awarding a sum of ₹ 27,800/- as compensation for the damage caused to his motorcycle along

with interest @ 7.5% per annum from the date of filing of claim petition till realization.

Aggrieved by award passed by the Tribunal, the present appeal has been filed to challenge the same.

Learned counsel for the appellant submits that as per Section 166 of the Act, 1988, any legal representative of a deceased can file the claim petition so as to claim compensation. The claim petition was dismissed on the ground that the claimant was owning one shop and his income was ₹ 25,000/- to ₹ 30,000/- and he was also an income tax payee. The deceased was also having one Life Insurance Policy and used to pay ₹ 10,000/- per annum on account of instalment to the Insurance Company. Learned counsel also submits that the liability under Section 140 of the Act, 1988 does not cease even in case of absence of dependency.

Learned counsel for the appellant has also relied upon the judgment of Hon'ble the Apex Court in case ***Smt. Manjuri Bera vs The Oriental Insurance Company Limited and another 2007(2) RCR (Civil) 675*** in support of his arguments to show that as per provisions of Section 140 of the Act, 1988, the compensation amounting to ₹ 50,000/- (fixed) should have been granted but the same has not been granted.

Learned counsel for the respondent-Insurance Company has opposed the submissions made by learned counsel for the appellant on the ground that well reasoned award has been passed and the appellant cannot claim parity with claimant-Janak Raj. The present appellant was not held entitled to get any compensation on account of death of his younger brother as he was not dependent upon him.

Heard the arguments of learned counsel for the parties and have also perused the award passed by the Tribunal.

For resolving the controversy in hand, Section 166 of the Act, 1988 is reproduced as under :-

“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.

(2) Every application under sub-section (1) shall be made, at the option of the claimant, either to the Claims Tribunal having jurisdiction over the area in which the accident occurred or to the Claims Tribunal within the local limits of whose jurisdiction the claimant resides or carries on business or within the local limits of whose jurisdiction the defendant resides, and shall be in such form and contain such particulars as may be prescribed :

Provided that where no claim for compensation under Section 140 is made in such application, the application shall contain a separate statement to that

effect immediately before the signature of the applicant.

xx xx xx

(4) The Claims Tribunal shall treat any report of accidents forwarded to it under sub-section (6) of Section 158 as an application for compensation under this Act.”

In view of clause (c) of sub-section (1) of Section 166 of the Act, 1988, in case of death, all or any of the legal representatives of the deceased become entitled to compensation and any such legal representative can file a claim petition. The proviso to said sub-section makes the position clear that where all the legal representatives had not joined, then application can be made on behalf of the legal representatives of the deceased by impleading those legal representatives as respondents.

Section 168 of the Act, 1988 is reproduced as under :-

“ Award of the Claims Tribunal :- On receipt of an application for compensation made under Section 166, the Claims Tribunal shall, after giving notice of the application to the insurer and after giving the parties (including the insurer) an opportunity of being heard, hold an inquiry into the claim or, as the case may be, each of the claims and, subject to the provisions of Section 162 may make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid and in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be :

Provided that where such application makes a claim

for compensation under section 140 in respect of the death or permanent disablement of any person, such claim and any other claim (whether made in such application or otherwise) for compensation in respect of such death or permanent disablement shall be disposed of in accordance with the provisions of Chapter X.

(2) The Claims Tribunal shall arrange to deliver copies of the award to the parties concerned expeditiously and in any case within a period of fifteen days from the date of the award.

(3) When an award is made under this section, the person who is required to pay any amount in terms of such award shall, within thirty days of the date of announcing the award by the Claims Tribunal, deposit the entire amount awarded in such manner as the Claims Tribunal may direct.”

The Tribunal was duty bound to make an award, determine the amount of compensation which is just and proper and specify the person or persons to whom such compensation would be paid.

According to Section 2(11) of Civil Procedure Code, “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. Almost in similar terms is the definition of legal representative under the Arbitration and Conciliation Act, 1996, i.e under Section 2(1)(g).

The claimant-appellant is brother of the deceased and has filed a claim petition under Section 166 of the Act, 1988. He was not dependent

upon his brother (deceased), however, he was entitled under Section 140(2) of the Act, 1988 for statutory compensation on account of the death of his brother as “No Fault Liability”. Although, it was the duty of the Tribunal before passing an order under Section 140 of the Act, 1988 to satisfy itself that the accident arose out of a motor vehicle which resulted in permanent disablement or death and that the claim is made against the owner and the insurer of the offending motor vehicle.

In the present case, the claimant is brother of the deceased and he did not file claim petition under Section 140 of the Act, 1988 but it was the duty of the Tribunal to grant compensation under Section 140 of the Act, 1988. In **Manjuri Bera’s** case (supra), the following observation has been made ;

“ 19. In the impugned judgment the High Court has correctly drawn a distinction between “right to apply for compensation” and “entitlement to compensation”. The High Court has rightly held that even a married daughter is a legal representative and she is certainly entitled to claim compensation. It was further held, on the facts of the present case, that the married daughter was not dependent on her father. She was living with her husband in her husband's house. Therefore, she was not entitled to claim statutory compensation. According to the High Court, the claimant was not dependent on her father's income. Hence, she was not entitled to claim compensation based on “No Fault Liability”.

20. In my opinion, “No Fault Liability”, envisaged in Section 140 of the said Act, is distinguishable from the rule of “Strict Liability”. In the former, the compensation amount is fixed. It is ₹ 50,000/- in cases of death (Section 140(2)). It is a statutory liability. It is an amount which can be deducted from the final amount

awarded by the Tribunal. Since, the amount is a fixed amount/crystalized amount, the same has to be considered as part of the estate of the deceased. In the present case, the deceased was an earning member. The statutory compensation could constitute part of his estate. His legal representative, namely, his daughter has inherited his estate. She was entitled to inherit his estate. In the circumstances, she was entitled to receive compensation under “No Fault Liability” in terms of Section 140 of the said Act. My opinion is confined only to the “No Fault Liability” under Section 140 of the said Act. That section is a Code by itself within the Motor Vehicles Act, 1988.”

In view of facts and law position as discussed above, the present appeal is partly allowed and the appellant is held entitled for compensation to the tune of ₹ 50,000/- in terms of Section 140 of the Act, 1988 under “No Fault Liability”.

The respondent-Insurance Company is directed to pay an amount of ₹ 50,000/- to the claimant-appellant within a period of 45 days from the date of receipt of certified copy of the order. However, in case, the said amount is not paid within the stipulated period, the appellant shall be entitled for interest @ 9% per annum.

(DAYA CHAUDHARY)
JUDGE

09.03.2017
gurpreet

Whether speaking/reasoned

Yes

Whether Reportable

Yes