

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

FAO No.1628 of 2013

Date of Decision.19.09.2017

Bijender and another

.....Appellants

Vs

Ranbir Singh and others

.....Respondents

Present: Mr. Anil Kumar Gahlawat, Advocate
for the appellants.

Mr. Rajnish Malhotra, Advocate
for the insurance company.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J.(ORAL)

The appeal has been preferred by major sons of the deceased- Balbir Singh, who died in a road accident occurred on 6.8.2011. The deceased along with one Prem Singh was travelling in an auto rickshaw bearing registration No.HR69-8120 driven by one Ajmer Singh and when they reached near Indo Arya in Hassangarh, a truck bearing registration No.HR38L-9067, driven rashly and negligently by respondent No.1, dashed against the aforesaid auto rickshaw, resulting into death of Balbir Singh and multiple grievous injuries to Prem Singh.

The Tribunal while assessing the compensation held that the claimants being major could not be said to be dependent upon father, therefore, there was no loss of dependency and awarded a compensation of ₹50,000/- on account of “no fault liability” with interest @6% from the date of filing of the claim petition till its realization.

Mr. Gahlawat, learned counsel appearing on behalf of the appellants submits that the claim petition was filed under Section 166 of the

Motor Vehicles Act, therefore, the Tribunal grossly erred in awarding a compensation of ₹50,000/- under “no fault liability”. It also committed illegality and perversity in holding that being majors, the claimants were not dependent on the earning of his father, therefore, question of loss of dependency did not arise. In the present scenario of society, it cannot be said as a rule of thumb that major sons cannot be dependent on the income of his father. In support of his contention, relies upon the judgment of Hon'ble Supreme Court rendered in *Smt. Manjuri Bera Vs. The Oriental Insurance Company Ltd. and another* 2007(10) SCC 643 wherein it has been held that legal representative is entitled to compensation even if he was not dependent on deceased and there was no loss of dependency, thus, urges this Court for modifying the award by awarding the compensation under Section 166 of the Motor Vehicles Act.

On the contrary, Mr. Malhotra, learned counsel appearing on behalf of the insurance company submits that the Tribunal has rightly provided a sum of ₹50,000/- under “no fault liability” by holding that the claimants being major sons of the deceased are not entitled for any loss of dependency, thus, urges this Court for dismissal of appeal while upholding the award passed by the Tribunal.

I have heard learned counsel for the parties and appraised the paper book. I have no doubt in my mind that the legislature for all intents and purposes used the expression 'legal representative' under Section 166 of the Motor Vehicles, a much wider term than 'legal heir' so that in case of death, any of the legal representatives of the deceased can file claim petition, even if all the legal representatives have not joined. A single legal representative can maintain the claim petition on behalf of all other legal

representatives by impleading the other legal representatives as respondents. There is no dispute also to the settled proposition of law that even major legal representatives can also maintain the claim petition.

The right to file a claim petition has to be considered in the background of right to entitlement. Now the question posed before this Court is to what extent the major sons who were not dependent on the income of the father would be entitled for compensation. Whether they are entitled to any compensation under Section 166 of the Motor Vehicles Act in the absence of loss of dependency, for, as per the judgment rendered by Hon'ble Supreme Court in *Sarla Verma vs. DTC 2009 (6) SCC 121* to quantify the compensation under Section 166, following factors has to be considered:-

“Step 1:- (ASCERTAINING THE MULTIPLICAND)

The income of the deceased per annum should be determined. Out of the said income a deduction is to be made in regard to the amount which the deceased would have spent on himself by way of personal and living expenses. The balance which is to be considered to be the contribution to the dependent family, constitutes the multiplicand.

Step 2 :- (ASCERTAINING THE MULTIPLIER)

Having regard to the age of deceased, the appropriate multiplier should be selected as prescribed in the aforementioned judgment.

Step 3:- (ACTUAL CALCULATION)

- i). The annual contribution to the family (multiplicand) when multiplied by such multiplier gives the “loss of dependency to the family.”
- ii). Thereafter, amounts under conventional heads may be added viz; loss of consortium, loss of love and

affection, loss of estate and funeral expenses.

A perusal of the aforementioned three steps would reveal that in case of death, it is primarily the loss of dependency that determines the compensation amount. In other words, the basic figure which comes after exhausting the first two steps is the loss of dependency and upon that the effect is given to the conventional heads of claim. Even the multiplier is decided and determined on the basis of length of dependency, which must be estimated. Therefore, in a case where the claimants are not dependent upon the deceased, the very first principles on which the compensation is required to be assessed are missing.

The irony in the present case is that the Tribunal while assessing the compensation of ₹50,000/- under “no fault liability” relied upon the very same judgment on which learned counsel for the appellant is relying upon i.e. *Smt. Manjuri Bera's case* (supra) to contend that even major sons are entitled to compensation under Section 166 in the absence of loss of dependency and the compensation is required to be assessed as per the formula prescribed by Hon'ble Supreme Court in *Sarla Verma Vs. DTC 2009(6) SCC 121*.

The case in *Smt. Manjuri* came up before the Hon'ble Supreme Court against the impugned judgment of the Calcutta High Court whereby it held that though the appellant, a married daughter of deceased, could maintain a claim petition in terms of Section 166 of the Motor Vehicles Act, she was not entitled to any compensation as she was not dependent upon the deceased. In the aforementioned case, the claim petition was filed under Section 140 of the Motor Vehicles Act for grant of statutory compensation of ₹50,000/-. The Calcutta High though held that the being legal

representative of the deceased she is entitled to maintain the claim petition but still not entitled to any compensation, not even to statutory compensation of ₹50,000/- under Article 140 of the Motor Vehicles Act.

Interestingly, both the Hon'ble Judges (Dr. Arijit Pasayat.J & S.H. Kapadia.J) though arrived at same conclusion but gave different judgments. The relevant paragraphs extracted from judgments of both the Hon'ble Judges are reproduced as under:-

“Dr. Arijit Pasayat J.

13. There are several factors which have to be noted. The liability under [Section 140](#) of the Act does not cease because there is absence of dependency. The right to file a claim application has to be considered in the background of right to entitlement. While assessing the quantum, the multiplier system is applied because of deprivation of dependency. In other words, multiplier is a measure. There are three stages while assessing the question of entitlement. Firstly, the liability of the person who is liable and the person who is to indemnify the liability, if any. Next is the quantification and [Section 166](#) is primarily in the nature of recovery proceedings. As noted above, liability in terms of [Section 140](#) of the Act does not cease because of absence of dependency.

S.H. Kapadia J.

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 Rs. 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/crystallized 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."

There is no dispute to the ratio decidendi culled out by the Hon'ble Supreme Court in **Smt. Manjuri Bera's case** (supra). Even the Tribunal was conscious about the fact that in case it assesses the compensation under Section 166 of the Motor Vehicles Act, the claimants in the absence of loss of dependency shall be entitled to conventional heads of claim only i.e. loss of love and affection, loss of estate and funeral expenses. The award was passed in the year 2012 and at that time, the prevalent trend for providing compensation under the heads of loss of love and affection, loss of estate and funeral expenses was to the tune of ₹10,000/-, ₹5000/- and ₹5000/- respectively, total of which comes to ₹20,000/- only. Therefore, the Tribunal perhaps after evaluating the aforementioned position and keeping in view the ratio decidendi culled out by the Hon'ble Supreme Court in **Smt. Manjuri Bera's case** (supra) that even if there is no loss of dependency, the claimant if he or she is a legal representative will be entitled to compensation, the quantum of which shall not be less than the liability flowing from Section 140 of the Act i.e. ₹50,000/-, awarded a compensation of ₹50,000/- under "no fault liability."

It is subsequently in the year 2013 when the Hon'ble Supreme Court in the ratio decidendi culled out **Rajesh v. Rajbir Singh, (2013) 9 SCC 54** enhanced the amount to ₹1 lac towards loss of consortium to the wife, ₹1 lac towards loss of love and affection to the minor children, ₹10,000/- for loss of estate and ₹25,000/- for funeral expenses.

Learned counsel for the appellant has wrongly interpreted the

judgment of the Hon'ble Supreme Court in **Smt. Manjuri Bera's case**

(supra). It was nowhere held in the aforementioned judgment that major claimants who are not dependent upon the income of the deceased shall be entitled to compensation on the same footing as done in the cases where there is actual loss of dependency.

Keeping in view the aforementioned facts and circumstances, the appellants-claimants in the present case shall be entitled to conventional heads of claim only i.e. loss of love and affection, loss of estate and funeral expenses. Therefore, I will provide ₹1,00,000/- for loss love and affection, ₹10,000/- for loss of estate and ₹25,000/- for funeral expenses. In all, the compensation shall be ₹1,35,000/-. The Tribunal has already awarded ₹50,000/- though under “no fault liability” with interest @6% per annum from the date of claim petition till the date of realization. Therefore, the appellants-claimants shall be entitled to a sum of ₹85,000/- (₹1,35,000-50,000=85,000), which shall also attract interest @6% per annum from the date of filing of the appeal till its realization. This amount shall be distributed equally between the appellants. The liability to pay the same shall be upon respondent Nos.1 to 3 jointly and severally as has already been determined by the Tribunal.

The award passed by the Tribunal is modified to the above extent and the appeal stands allowed.

(AMIT RAWAL)
JUDGE

September 19, 2017
Pankaj*

Whether reasoned/speaking Yes

Whether reportable Yes