IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 1042 of 2015 (O&M)

Date of Decision: 25.10.2017

Karamjit Singh

.......Appellant

Versus

Satguru Singh and others

......Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Aminder Singh, Advocate
for the appellants.

None for respondents No. 1 and 2.

Mr. Neeraj Khanna, Advocate for
Mr. Ravinder Arora, Advocate
for respondent No.3 (Insurance Company).

AVNEESH JHINGAN, J.

The present appeal has been filed against the award dated 2.9.2014 passed by the Motor Accidents Claims Tribunal, Sangrur (for short 'the Tribunal').

The brief facts necessary for adjudication of the present appeal are as under:

On 20.1.2013 five persons namely Harpal Kaur, Gurjit Singh, Hardeep Kaur, Jagtar Singh and Gurwinder Kaur, who were travelling in a Car bearing registration No.PB-11-Z-1105, met with a Motor vehicular accident. The said car was struck by a bus bearing registration No. PB-13-Z-9375 (for short 'the offending vehicle'). As a result of the accident, all the five persons died on the spot. FIR No. 13 dated 20.1.2013 was registered at Police Station Dirba.

The claim petition under Sections 166 of the Motor Vehicles Act, 1988 (for short 'the Act') was filed by the LRs of deceased-Gurjit Singh.

The Tribunal after considering witnesses and evidence, awarded a sum of Rs. 1,35,000/-alongwith interest at the rate of 9% per annum.

The present appeal has been filed for enhancement of compensation awarded.

I have heard learned counsel for the parties and perused the paper book.

The facts are not in dispute by the parties.

There is no dispute with regard to rash and negligent driving of the offending vehicle.

Learned counsel for the appellant has argued that the Tribunal has not awarded anything for loss of dependency. An amount of Rs.1,35,000/- awarded included Rs. 1,00,000/- for loss of love and affection; Rs.25,000/- for funeral expenses and Rs.10,000/- for loss of estate. He further argued that though the claimants were major children but it was pleaded that son was a student. The claimants were the legal heirs of the deceased and the Tribunal should have awarded the compensation by applying the multiplier method.

Learned counsel for the respondent No.3-Insurance Company argued that both the children were major and were independent, therefore, loss of dependency has rightly not been awarded by the Tribunal.

It would be pertinent to mention that Section 166 of the Act, entitles the legal heirs to claim compensation. There is no distinction made in the Section about legal heirs being major or minor. The Act provides that a claim petition for compensation can be filed by the legal heirs of the deceased. In the present case, there is no dispute that both the children are legal heirs of deceased Gurjit Singh.

This Court in ***Smt. Gurdev Kaur and others Versus Jharmal Singh and another*** 2017 (3) PLR 8, has held as under:

> "12. There is no rebuttal to the statement of appellant-claimant Smt. Gurdev Kaur the widow of deceased Mam Raj that she and her two sons are living jointly. Meaning thereby both the sons were living jointly with their deceased father. No doubt both of them are major and are doing the private job. One of them is getting the salary at the rate of Rs.7000/- to Rs.8000/- per month and the other is getting salary at the rate of Rs.10,000/- to Rs.12,000/- per month. So, it is not a case where the sons of the deceased were drawing big salaries and they were not in need of any contribution to the family by their father. It is an admitted fact that even if a son is major and is earning, he does not stop looking to his father for financial help. The sons, even if they are major, do not lose the status of legal representatives, about which there is a reference in Section 166 (1) (c) of the Motor Vehicles Act, 1988 (for brevity the "Act"). Therefore, even the major sons and daughters are entitled to maintain the claim petition on the death of their father."

This Court in ***National Insurance Company Limited Versus Paramjit Singh and others*** 2017 (1) PLR 364, relying upon the decision of Hon'ble the Apex Court has held as under:

> "9. A perusal thereof makes it clear that all or any of the legal representatives of the deceased may file application for compensation before the Tribunal. In this regard, no distinction is made between a major or minor and those

> dependent or not dependent on the income of the deceased.
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> xx xx xx xx
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> 19. From all these decisions, it can be safely concluded that a legal representative who is entitled to inherit the estate of the deceased, even if he is not wholly dependent on the deceased, would be entitled to compensation.
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> xx xx xx xx
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> 21. Thus, in view of various decisions as also having regard to the plain language of the provisions of Section 166 of the Act, I do not find any substance in the argument of the appellant that the respondents, the major married sons of the deceased, who may also have independent income are not entitled to compensation."

From the perusal of Section 166 of the Act and the above decisions, the legal representatives can claim compensation under the Act without any distinction of being major or minor.

In the present case, the son of the deceased has deposed before the Tribunal that he was student. Though the said averment was not substantiated by any evidence but the fact remains that respondent has brought on record no evidence to show that both the children were independent and earning.

In such circumstance, the loss of dependency should be calculated taking into consideration the minimum wages available at the relevant time. The monthly income at the relevant time as per the Minimum Wages Act was Rs.4300/-, after making 1/3rd deduction for self expenses the monthly loss of dependency comes to Rs.2870/-and by applying the multiplier of 13 as per the decision of Hon'ble the Apex Court in ***Smt. Sarla Verma and others vs. Delhi Transport Corporation and another, (2009) 6 SCC 121,*** keeping in view the age of the deceased as 49 years, loss of dependency is calculated as under:

2870 x 12 x 13 =4,47,720/-

Hon'ble the Apex Court has time and again held that for calculating loss of dependency, multiplier method should be applied.

Accordingly, the award of the Tribunal is enhanced as per Table given below:

Sr. No.	***Description***	***Amount earlier awarded by the Tribunal***	***Amount now awarded***
1	Loss of love and affection	Rs.1,00,000/-	Rs.1,00,000/-
2	Funeral expenses	Rs.25,000/-	Rs.25,000/-
3	Loss of Estate	Rs.10,000/-	Rs.10,000/-
4	Loss of dependecy	Not awarded	Rs.4,47,720/-
	Total	Rs.1,35,000/-	Rs.5,82,720/-

The award dated 2.9.2014 passed in MACT No. 52 dated 2.5.2013 is modified to the extent that an amount of Rs.1,35,000/- is enhanced to Rs. 5,82,720/-. The claimants shall be entitled to enhanced amount alognwith interest at the rate of 6% per annum from the date of filing of the appeal till realization of the amount.

The appeal is partly allowed in the above terms.

(AVNEESH JHINGAN)
JUDGE

25.10.2017
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Whether speaking/reasoned Yes/No

Whether Reportable: Yes/No