

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

Date of decision: 12.10.2017

FAO No.4628 of 2013 (O&M)

Rani Devi ...Appellant

Vs.

Sarbati Devi & others ...Respondents

FAO No.4953 of 2013 (O&M)

Rani Devi ...Appellant

Vs.

Bijender & others ...Respondents

FAO No.5727 of 2013 (O&M)

Rani Devi ...Appellant

Vs.

Bijender & others ...Respondents

FAO No.6054 of 2013 (O&M)

Reliance General Insurance Co. Ltd. ...Appellant

Vs.

Sarbati Devi & others ...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. N.S.Shekhawat, Advocate, for the appellant
 in FAO Nos.4628, 4953 & 5727 of 2013.

Mr. P.K.Longia, Advocate,
 for respondents No.1 & 2 in FAO Nos.4628 and 6054 of 2013.

FAO No.4628 of 2013 (O&M);
 FAO No.4953 of 2013 (O&M);
 FAO No.5727 of 2013 (O&M) &
 FAO No.6054 of 2013 (O&M)

Mr. R.K.Bashamboo, Advocate,
 for the appellant in FAO No.6054 of 2013;
 for respondent No.5 in FAO No.4628 of 2013 &
 for respondent No.3 in FAO No.4953 of 2013.

Mr. Balraj Singh Rathee, Advocate,
 for respondent Nos.1 & 2 in FAO No.4953 of 2013; &
 for respondent Nos.3 & 4 in FAO Nos.4628 & 6054 of 2013.

RAJIV NARAIN RAINA, J.

1. This order disposes of the aforementioned four appeals arising out of a consolidated award rendered by the Motor Accident Claims Tribunal, Kurukshetra on 16.08.2013 in the same accident.

2. In FAO No.4628 of 2013 (MACT Case No.99 of 2012), Rani Devi has challenged the award, whereby compensation of ₹30,40,200/- has been awarded to Sarbati Devi and Raghbir Singh; in FAO No.4953 of 2013 (MACT Case No.98 of 2012), Rani Devi challenges the award, whereby her claim for compensation of ₹50 lacs on account of death of her daughter-in-law Sarita was dismissed; and in FAO No.5727 of 2013 (MACT Case No.97 of 2012), Rani Devi lays challenge to the award, whereby her claim for compensation of ₹50 lacs on account of death of her son Raj Kumar was dismissed; while FAO No.6054 of 2013 has been preferred by the Insurance Company challenging the award, whereby an amount of ₹30,40,200/- by way of compensation has been awarded to Sarbati Devi and Raghbir Singh on account of death of their daughter Sarita late wife of deceased Raj Kumar.

3. The brief facts are that on 02.07.2010, Raj Kumar and his wife, namely, Sarita, a newly married couple, were travelling by road from Kurukshetra on their way to Village Bhainsi Majra on a motorcycle bearing

No.HR-41D-0638, Raj Kumar riding with his wife sitting pillion. They were accompanied by Balwan Singh and Ramesh Kumar on a separate motorcycle bearing No.HR-41C-7038. At about 9.00 PM, when Raj Kumar and his wife Sarita reached near TERI College on Kurukshetra-Dhand road, after crossing the bus-stand in Kamoda, the offending truck bearing registration No.HR-46B-4434, with respondent No.1 on the steering coming at a very high speed struck the motorcycle from behind rashly and negligently. Raj Kumar and Sarita lost control and fell down on the road and unfortunately the front wheel of the truck crushed them to death on the spot.

4. Ramesh Kumar on the accompanying motorcycle chased the truck till it stopped. On enquiry, the driver disclosed his name as Bijender son of Om Parkash, resident of Village Dhob, District Rohtak. After that encounter, the driver fled away from the spot leaving the offending truck standing at the spot. The police came to the spot of accident. An inquest was started. In this regard, FIR No.257 dated 02.07.2010 under Sections 279, 336, 337, 304-A IPC was registered against the driver. The post-mortem on the dead bodies of Raj Kumar and Sarita was conducted by the doctors of L.N.J.P.Hospital, Kurukshetra on the following day.

5. Raj Kumar was a Science Teacher in Government Middle School, Ghararsi. He was 28 years of age at the time of the accident and earned a salary of ₹26,000/- per month. Sarita was 26 years old and was working as a Dispenser at Shri Krishan Government Ayurvedic College, Kurukshetra. Her monthly income was ₹20,000/-. They were married recently and had not started a family.

6. Before proceeding further, it is necessary to mention the description of the parties. The same is as follows:

- (i) Rani Devi is the mother of Raj Kumar (deceased) and mother-in-law of Sarita (deceased);
- (ii) Sarbati Devi and Raghbir Singh are the mother and father of Sarita (deceased) and mother-in-law and father-in-law of Raj Kumar (deceased);
- (iii) Reliance General Insurance Company Limited – insurer of offending Truck bearing No.HR-46B-4434

7. As a result of the fatal incident, the dispute regarding compensation began in two sets of families i.e. husband side and wife side.

8. Rani Devi filed two claims being MACT Case No.97 claiming compensation to the tune of ₹50 lakhs on account of the death of her son Raj Kumar and MACT Case No.98 claiming compensation to the tune of ₹50 lakhs on account of death of her daughter-in-law Sarita; whereas the parents of Sarita filed claim petition bearing MACT Case No.99 of 2012 claiming compensation to the tune of ₹40 lakhs.

9. After considering all the materials on record, the Tribunal at Kurukshetra vide its consolidated award dated 16.08.2013 dismissed the claim petitions filed by Rani Devi and accepted the claim petition filed by the parents of Sarita (deceased).

10. The Tribunal has accepted the claim application filed by Sarbati Devi and Raghbir Singh, parents of Sarita (deceased) observing in Para.32 of the award as follows:

“32. From the aforesaid authorities, it is clear that in case of a married daughter, the compensation is to be given to her parents. Therefore, Sarbati Devi and Raghbir Singh are entitled for compensation on account of death of Sarita.”

11. Though at one stage in the impugned award, Rani Devi's claim has been restricted to compensation on account of death of her son only, but

she has been non-suited for the reason that it was mandatory to have impleaded all the legal representatives of the deceased and in case they have not joined, they shall be impleaded as respondents to the application and when not so impleaded, the petition is not maintainable.

12. As far as the first issue is concerned, I refrain myself from expressing any final opinion due to the proposed remand order. However, as far as second issue is concerned, I do not find myself in agreement with the view of the Tribunal that only because Rani Devi did not implead her remaining sons either as claimants or as legal representatives she deserved no compensation. The proviso to Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act'), which has been applied as mandatory has to be read in conformity with the relevant provisions of the Hindu Succession Act, 1956. The brothers of the deceased Raj Kumar were Class II heirs and had no right to compensation in the presence of their widowed mother, a Class I heir. It is only in the absence of the widow that brothers can claim as reversioners to the estate of a deceased brother in Class II heirs. The brothers, who are independent and settled in marriage had their own sources of income and were not dependent on late Raj Kumar and would have no claim for the compensation in the presence of the mother, their father having pre-deceased the mother. I would, therefore, not accept the legal position expounded by the Tribunal to non-suit Rani Devi and hold the petition as not maintainable. If the admission came from the mother during cross-examination that she had two other sons, it makes no difference. As a matter of fact, the finding of the Tribunal is by nature of reasoning self-contradictory. If the suit is held not maintainable, even then it would impact apportionment of compensation in the case of the widow, if the

compensation is a shared right, it would give her alone 1/3rd share of the compensation likely to be awarded by the Tribunal. But Rani Devi has had none of it and is left high and dry.

13. There is a difference between the law in the Hindu Succession Act, where the word 'heir' has been used in the context of property left by a female and compensatory losses in the Motor Vehicles Act as the purposes of both enactments are not one and same. The amount of compensation in the 1988 Act is not a property in the nature of an estate. The word 'heir' has been defined in Section 3(1) of the Hindu Succession Act, which means 'any person, male or female, who is entitled to succeed to the property of an intestate under [this] Act' and accordingly the expression 'legal representatives' used in proviso to Section 166 of the Act is not defined and the rights of brothers remain subservient to the mother in case of death of one of the sons. Too much emphasis cannot be placed on dependency on the other sons other than the deceased in a case of compensation under Section 166 of the Act. As a matter of fact, Section 166(1)(c) provides that an application can be brought by all or any of the legal representatives of the deceased. The legislature when it enacted the Motor Vehicles Act generalized the law to accommodate all situations without being specific and therefore, in the absence of Class I heir, Class II heirs could also step in to claim compensation and save it from escheat. When tested in this manner, the finding does not hold good and is liable to be overruled.

14. Coming to the core issue regarding inter se disputes between Rani Devi and the parents of Sarita (deceased), it has been argued with force by Mr. Shekhawat that the Tribunal went completely wrong in distinguishing the decision of this Court in United India Insurance Company

Limited Vs. Parladd Rai & others, 2010 (4) RCR (Civil) 153 and instead following the decisions of the Madras High Court; Andhra Pradesh High Court at Hyderabad and the Kerala High Court at Ernakulam in cases, namely, Glory Bai & another Vs. S.K.A.Noojakan Beevi & others (decided on 02.03.2011); Andhra Pradesh State Road Transport Corporation & another Vs. Boyina Negabhushana Rao & others, 2006 ACJ 2443; and Anandavally Amma & others Vs. Kerala State Road Transport Corporation & others, 1997 ACJ 1044 in preference to the view expressed by this Court. By following these three judgments in preference to the view of this Court, Rani Devi has been deprived of compensation claimed through her daughter-in-law.

15. In Southern States in India and Bengal the Dayabhaga law is followed while in the territories of this Court and Northern India, Mitakshara law prevails as against the matriarchal society in Southern society the patriarchal system is followed in a great part of the territories in Northern India and this appears to be the underlying and omniscient principle in the judgments of the High Courts in Southern States relied upon by the Tribunal. The Tribunal has not assigned any reason to depart from the law practiced in this Court and has brushed aside the judgment in *Parladd Rai*'s case and held that the petition by Rani Devi with respect to her expired daughter-in-law is not maintainable.

16. The contention in *Parladd Rai* case on behalf of the Insurance Company was that parents-in-law could not be said to be dependents of the deceased and, therefore, the petition itself is not maintainable. Learned Single Judge (K.Kannan, J.) noticed in his order that under Section 15 of the Hindu Succession Act, in the absence of children and husband, on the death

of a female, heirs of the husband shall be the legal heirs. The father and mother are the heirs of the husband and, therefore, they shall be taken as legal heirs. Thus, the maintainability of the petition could not be doubted. The Court observed that the extent of dependence may probably vary and it may not normally happen that the parents-in-law could be stated to be dependent on the earnings of the daughter-in-law. However, it ought to make a difference in a case where the son of the claimants has also died, the Court opined. The Single Bench held as follows:

“3. ...In Arun Kumar Agarwal and another v. National Insurance Company and others, decided on 26th July, 2010 in Civil Appeal No. 5843 of 2010 reported in 2010(3) RCR(Civil) 827 : 2010 RAJ 262, the Supreme Court was dealing with the case of death of a woman in a road accident and sounded on the global approaches in the matter of an assessment of contribution of a householder to the family.

4. The Bench spoke through two independent judgments voicing similar concerns. Mr. Justice A.K. Ganguly referred to a judgment of a Division Bench of Madras High Court in National Insurance Company v. Minor Deepika in Civil Miscellaneous Appeal No. 3049 of 2007 and others on 27.04.2009 reported in 2009 (6) MLJ 1005 that quoted several international conventions and the need for appropriately assessing the value of the homemakers' services.....

xx

xx

xx

5. In Deepika, the Court ultimately suggested that the householder's contribution must be taken as 50% of the husband's contribution to the family. I am setting this out only to answer to a particular approach advocated by the learned counsel for the insurer that the parents-in-law could not have been treated as dependents and the claim petition must have

been dismissed. I have already held that it is not unusual that a daughter-in-law takes care of the parents-in-law in her husband's house. The situation is truly poignant in this case that the claimants have lost their son also. The presence of a daughter-in-law and the value of her services could never be under-estimated in Indian situation. Daughters-in-law are not for burning. Such incidents are exceptions and before long, they shall be forgotten experiences, if the society acts with resolve to stamp out this scourge, in thought and in action in assigning to a daughter-in-law an inferior role in the homemaking. The daughter-in-law is the carrier of family tradition to the generation next; a living embodiment of sacrifice; a repository of traditional values and an amalgam of husbands family practices with biological family's upbringing.”

17. There can be no manner of doubt that Rani Devi should be entitled to compensation on the death of her son and daughter-in-law Sarita subject remand proceedings. However, the question of quantum of compensation and distribution is a matter of consideration for the Tribunal and not for this Court, in the first instance, as against the rights of Sarita's parents. The Tribunal will revisit the judgment in *Pralad Rai* case and other judgments which may be cited before it

18. The question of compensation in this case presents hardly any difficulty when the Insurance Company does not dispute liability by questioning the validity of Driving License of the driver of the offending Truck or of the Insurance Policy. Since the deceased were both Government servants and salaried employees the income is documented and widely known and the multiplier/multiplicand method can easily be applied to arrive at compensation under the conventional heads of claim etc. including

FAO No.4628 of 2013 (O&M);
 FAO No.4953 of 2013 (O&M);
 FAO No.5727 of 2013 (O&M) &
 FAO No.6054 of 2013 (O&M)

for future prospects, when the employment was stable till retirement had the couple been alive.

19. While the Tribunal has awarded ₹30,40,200/- to the parents of the Sarita, the claim petitions filed by Rani Devi have been dismissed in *toto* and she has got no compensation whatsoever, which may appear to be a travesty of justice. The claim even through her son Raj Kumar has been denied leave alone from her daughter-in-law on a super technicality.

20. As a result of the above discussion, while setting aside the impugned Award dated 16.08.2013, FAO No.4628 of 2013; FAO No.4953 of 2013 and FAO No.5727 of 2013 preferred by Rani Devi are disposed of. The award in favour of the parents of Sarita is set aside for fresh consideration. The claim petitions are remanded to the Tribunal for fresh consideration by passing a fresh award in accordance with law.

21. The amount of compensation awarded to the parents of Sarita will not be disbursed and the interim order dated 12.12.2013 issued by this Court shall continue in operation till the final disposal in remand and three months thereafter for parties to approach this Court, in case they are aggrieved by the final decision of the Tribunal.

22. At this stage, Mr. Shekhawat appearing on behalf of Rani Devi states at the Bar that Sarbati Devi and Raghbir Singh, parents of Sarita (deceased), have four children who are well settled in life and live in their separate matrimonial homes. One he says is a Principal and the others photographer, Mason and a Shop-keeper respectively. He further submits that the parents of late Sarita were not dependent on her income and had their own sources of income, while the widow (Rani Devi) may have two living sons, but was residing with deceased Raj Kumar. This is also an issue

FAO No.4628 of 2013 (O&M);
 FAO No.4953 of 2013 (O&M);
 FAO No.5727 of 2013 (O&M) &
 FAO No.6054 of 2013 (O&M)

for the Tribunal to consider on the question of dependency in the remand proceedings. Further evidence, if any, will be restricted to serve the remand directions and the previous evidence will remain intact.

23. Now coming to FAO No.6054 of 2013 preferred by the Reliance General Insurance Co. Ltd. against the claim of the parents of Sarita (deceased), no orders are required to be passed, as the impugned Award itself has been set aside and the claim petitions remanded for fresh consideration on all aspects relevant to remand. The Company will have its say afresh on their grounds in appeal. Accordingly, this appeal is ordered to stand dismissed by keeping the issues open for reconsideration in remand to be decided in accordance with law.

12 .10.2017
 Vimal

[RAJIV NARAIN RAINA]
JUDGE

Whether speaking/reasoned: *Yes*

Whether Reportable: *Yes*