

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

**FAO No. 6819 of 2016 (O&M)
Date of Decision: August 28, 2017**

Reeta Devi

..Appellant

Versus

Gian Chand and others

..Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present:- Mr. S.M. Tripathi, Advocate
for the appellant.

Mr. Roopam Jain, Advocate
for respondents no.1 & 2.

Mr. Rajbir Wasu, Advocate
for respondent no.3-insurance company.

REKHA MITTAL, J.

The claimant is in appeal against the award dated 15.07.2016 passed by the Motor Accidents Claims Tribunal, Chandigarh (hereinafter to be referred as the Tribunal) whereby application filed under Section 166 of the Motor Vehicles Act, 1988 (in short the Act) has been dismissed.

The claimant/appellant filed an application under Section 166 of the Act for grant of compensation on account of death of Rajjan Yadav son of Late Shri Bachchulal Yadav in a motor vehicular accident that took place on 15.05.2015 in the area of Police Station Baddi, District Solan. The Tribunal recorded findings on issue no.1 in favour of the claimant but while deciding issue no.2 negated plea of the claimant that she is widow of

deceased Rajjan Yadav, in the light of observations recorded in para no.16 of the award.

Counsel for the appellant has submitted that claimant brought on record overwhelming evidence both oral and documentary to establish her plea that she is widow of deceased Rajjan Yadav, thus, entitled to get compensation. It is further submitted that the deceased left behind his mother whereas his father pre-deceased him but mother of the deceased could not be impleaded as a party as she did not co-operate with the claimant/appellant. Further argued that the claimant has filed an application for additional evidence to produce and prove the photographs Annexures A-1 to A-9 with regard to solemnization of marriage of the claimant with Rajjan Yadav.

Counsel representing both sets of respondents have supported the award with the submissions that the claimant intentionally did not implead mother of the deceased as a party so that falsehood on her part claiming to be widow of deceased may not come on the surface.

I have heard counsel for the parties, perused the paper book particularly the award dated 15.07.2016.

Be that as it may, indisputably, deceased left behind his mother who was not impleaded as a party in the petition filed by the claimant. The Tribunal has an obligation to award just compensation as envisaged under Section 168 of the Act.

Section 166 of the Act deals with application for compensation and Proviso appended to Section 166(1) of the Act reads as follows.

“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.”

A plain reading of the Proviso makes it evident that all the legal representatives of the deceased must be a party to the application for compensation either as petitioners or respondents whatever the case may be. Under Section 158 of the Act, if the information is sent to the Tribunal by owner of the vehicle involved in the accident, the Tribunal has to treat the information as an application for compensation and proceed with the same in accordance with law for making an award in compliance with the provisions of Section 168 of the Act. Under the circumstances, even if the claimant has not impleaded mother of the deceased as a party, it was an obligation of the Tribunal to implead her as a party and thereafter to decide the case in accordance with law. The presence of mother of the deceased would have rather facilitated the Tribunal to arrive at a just decision whether claim of the appellant to be widow of the deceased is correct or otherwise. In the given facts and circumstances, it is expedient in the interest of justice that findings of the Tribunal recorded on issue no.2 are set aside and the matter is remitted to the Tribunal for adjudication afresh after impleading mother of the deceased on the array of respondents.

For the foregoing reasons, the appeal is partly allowed. The award passed by the Tribunal except findings on issue no.1 is ordered to be

set aside and the matter is remitted to the Tribunal for decision of the case afresh (except issue no.1) after impleading mother of the deceased on the array of respondents. However, nothing stated here-in-before shall be construed as an expression of the opinion on merits of the case.

Parties through their counsel are directed to appear before the Tribunal on 18.09.2017.

(REKHA MITTAL)
JUDGE

August 28, 2017
Sunil

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No