IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 4805 of 2002

Date of Decision: January 12, 2018

National Insurance Company Ltd.

......Appellant

versus

Nidhi Goel and others

.....Respondents

FAO No. 3412 of 2002

Nidhi Goel and others

......Appellant

versus

Jai Pal and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

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Present:- Mr. Deepak Suri, Advocate (in FAO No. 4805 of 2002)
Mr. Heman Aggarwal, Advocate (in FAO No. 3412 of 2002)
for the appellant(s)

Mr. Madan Gupta, Advocate
for respondents No. 4 to 6 (in FAO No. 4805 of 2002)
for respondents No. 1 to 3 (in FAO No. 3412 of 2002)

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Sudhir Mittal, J. (Oral)

C.M. No. 4412-CII of 2015 in
FAO No. 4806 of 2002

This is an application for placing on record additional evidence filed by the applicant-appellant. By virtue of this application the applicant-appellant seeks to produce on record certificate dated 17.02.2003 (Annexure A-1) issued by a private investigator to the effect that Nidhi Goel (respondent No. 1) had re-married on 17.1.2001.

2. Notice of this application was issued on 04.03.2015. No reply had been filed thereto by the claimants till 15.12.2017, when judgment was reserved and liberty was granted to the learned counsel representing the claimants to file an

affidavit of respondent No. 1 – Nidhi Goel regarding her marital status.

3. Nidhi Goel has filed her affidavit dated 18.08.2015 attested on 14.12.2017. In this affidavit Nidhi Goel is mentioned as wife of Naveen Gupta and resident of Pandit Dev Dutt Marg, Vikas Nagar, Dehradun. A perusal of the application shows that in the report (Annexure A-1), Nidhi Goel is stated to have been married with Naveen Gupta and her address is mentioned as Vikas Nagar, Dehradun.

4. From the above, it is apparent that Nidhi Goel re-married on 17.1.2001 and is presently the wife of Naveen Gupta. No doubt that the report dated 17.2.2003 is sought to be produced by way of additional evidence vide application dated 26.2.2015 and as such would be liable to be rejected for non-exercise of due diligence by the applicant, but keeping in view the fact that respondent No. 1– Nidhi Goel has admitted herself to be wife of Naveen Gupta, the application for additional evidence can be allowed.

5. In view of the above, in exercise of jurisdiction vested under Order 41 Rule 27 (1)(b) of the Code of Civil Procedure, 1908, application for additional evidence is allowed and the certificate (Annexure A-1), is taken on record.

FAO No. 4806 of 2002 and
FAO No. 3412 of 2002

6. This judgment would dispose of (FAO No. 4805 of 2002 and FAO No. 3412 of 2002), as the same arise out of one and the same accident. FAO No. 4805 of 2002 has been filed by the Insurance Company whereas FAO No. 3412 of 2002 has been filed by the claimants.

7. On 13.10.2000, Sanjay Goel s/o Niranjan Parkash was going on his car from Ladwa to Pipli. After he crossed village Mathana tractor bearing No. HR-07A/6724 came from the opposite direction and it was being driven rashly and negligently. It was also towing a trolley. The accident was caused due to rash and

negligent driving of the Tractor resulting in serious injuries to him as well as one Gian Chand, who was sitting in the co-driver seat. This accident was witnessed by Dr. Ved Parkash Aggarwal, a private medical practitioner of Ladwa who was in his own car and was following at a little distance. As a result of this accident, Sanjay Goel passed away at the age of 28 years.

8. Learned Tribunal awarded a compensation of ₹ 12,89,500/- to the claimants alognwith interest @ 9% p.a. vide award dated 08.02.2002. It was held that the accident had been caused due to rash and negligent driving of respondent No. 1 – Jai Pal (driver of tractor). While assessing the compensation, reliance was placed upon income-tax returns Ex. PJ for the assessment year 1997-98 and 1998-99 to conclude dependency as ₹ 80,000/- per annum. Taking the age of the deceased to be 28 years, a multiplier of 16 was applied for calculating the compensation awardable to the claimants.

9. Learned counsel for the Insurance Company has vehemently contended that no compensation is payable to the widow viz. Nidhi Goel as she got re-married within about three months of the death of her husband. He further submitted that the dependency had been wrongly assessed because -

(i) the income of the deceased was assessed on the higher side and,

(ii) the number of dependents would decrease if Nidhi Goel is not held entitled to any compensation.

10. Both these contentions have been strongly contested by learned counsel for the claimants.

11. It is the case of the Insurance Company that once Nidhi Goel had re-married she ceased to be dependent upon the deceased. Moreover, after her re-marriage she became dependent upon the person who married her and, therefore, there was no question of the Insurance company paying compensation for her maintenance during her life time. He placed reliance upon ***Anju Mukhi and***

another vs. Satish K. Bhatia and others, 2010(15) SCC 630, United India Insurance Company vs. Eda Anjanamma and others, 2005 ACJ 1921. On the contrary, counsel for the claimants has relied upon ***Suba Singh and another vs. Davinder Kaur and another, 2011(13) SCC 296, United India Insurance Co. Ltd. vs. Smt. Baby and others, 2017(1) Civil LJ 723. Surjit Kaur vs. Rajwinder Singh and others, 2017(1) PLR 335.***

12. Section 166 of the Motor vehicles Act, 1988 (hereinafter referred to as the Act) entitles a "legal representative" of the deceased to claim compensation. There is no bar in the said Act against a widow from claiming compensation on account of her re-marriage. The term "legal representative" is not defined in the Act. A reference, however, can be made to Section 2(11) of the Code of Civil Procedure, 1908, for its definition where said term means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of 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. After the death of her husband, the widow continues to represent his estate irrespective of her re-marriage because she inherits part of the estate of her deceased husband. Thus, such widow is included in the definition of "legal representative" as reproduced above and, thus, can maintain a petition under Section 166 of the Act even after her re-marriage. I draw support from the judgment of Hon'ble Supreme Court in ***Suba Singh (supra)*** wherein it is has been held that a widow is entitled to compensation under section 357 Cr.P.C. even after her re-marriage. I also draw support from a Division Bench judgment of the Allahabad High Court in ***United India Insurance Company Limited (supra)*** and also a single Bench judgment of this Court in ***Surjit Kaur (supra).*** The judgment of the Hon'ble Supreme Court in ***Anju Mukhi (supra)*** is distinguishable because the provisions of law mentioned hereinabove have not been noticed in it. The judgment

of the Andhra Pradesh High Court in ***Eda Anjanamma (supra)*** is not binding and I respectfully differ from the dictum therein.

13. In view of the above, I hold that the widow of the deceased person is also entitled to claim compensation. It is beyond the pale of doubt that the Act is a social welfare legislation and should be interpreted so as to fulfil the objective with which it was enacted. If the proposition put forward by the Insurance Company is to be accepted, it would militate against the right of a widow to re-marry. This would not be in public interest or in the interest of the society at large.

14. So far as the quantum of compensation is concerned, it is on record that for the assessment year 1998-99, the income of the deceased from his business was ₹ 85,420/- and he earned a sum of ₹ 1,72,606/- from agriculture. In the assessment year 1997-98 his income from business was ₹ 55,064. Under the circumstances, it can not be said that the dependency assessed at ₹ 80,000/- p.a. is on the higher side as the income of the deceased had been increasing every year. In view of my finding that the widow is also entitled to compensation after re-marriage, no change/reduction of dependency is called for. It is not in dispute that the deceased was 28 years of age. However, the multiplier has been assessed wrongly by the learned Tribunal and the same is increased to "17".

15. The compensation is thus, assessed as follows :-

Annual income	₹ 10,000 x 12 = ₹ 1,20,000/-
Increase of 40% in income on account of future prospects (₹ 1,20,000+ ₹ 48,000)	₹ 1,68,000/-
Deduction of 1/3rd on account of personal expenses(₹ 1,68,000 - ₹ 56,000)	₹ 1,12,000/-
Annual dependency applying multiplier of 17 as deceased was 28 years of age (₹ 1,12,000x17)	₹ 19,04,000/-
Loss of Estate	₹ 15,000/-
Loss of consortium	₹ 40,000/-
Funeral Expenses	₹ 15,000/-
Total compensation	**₹ 19,74,000/-**

16. In view of the above, the appeal of the claimants is allowed and that of the Insurance Company is dismissed. The claimants would be entitled to interest @ 7.5 % p.a. from the date of filing of claim petition till the date of actual payment of the enhanced compensation. The Insurance Company is directed to pay the enhanced amount within a period of three months from the date of receipt of certified copy of this judgment.

January 12, 2018 **[SUDHIR MITTAL]**
reena **JUDGE**

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No