

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 2499 of 2001 (O&M)

Date of Decision: 01.03.2018

Om Parkash and another

...Appellants

VERSUS

Rajesh and others

....Respondents

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Rakesh Lathwal, Advocate
for the appellants.

Mr. Puneet Singh, Advocate
for Mr. Amit Kumar, Advocate
for respondent no. 3.

SURINDER GUPTA, J.

Mahender Singh (later referred to as 'the deceased') died on 06.09.1997 in a motor vehicle accident with truck bearing registration no. HR-29-G-3045 (later referred to as 'the offending vehicle') in the area of Lakhmi Piau, Kundli *tehsil* and district Sonapat. Claimants-appellants filed claim petition under Section 166 of the Motor Vehicles Act, claiming themselves to be dependants as well as legal heirs of deceased. Motor Accident Claims Tribunal (later referred to as 'the Tribunal'), however, held that they were not dependants on the deceased and dismissed their claim petition.

2. While learned counsel for appellants has argued that being legal heirs of deceased, appellants were entitled to compensation for death of their brother in a motor vehicle accident, learned counsel for respondent no. 3-Insurance Company has submitted that deceased was younger brother of appellants, who were not dependants on him, as such, the Tribunal has rightly declined grant of compensation.

3. The Tribunal while discussing dependancy of appellants on the deceased has observed in para 15 of the award as follows:-

“15. Now the question which has arisen before this Tribunal is that whether the claimants who are real brothers of deceased Mahender Singh and who are admittedly earning ₹5000/- per month and ₹4000/- per month, respectively and were not dependants of deceased Mahender Singh, are entitled to compensation or not? The answer to this aforesaid question has been answered in negative by our own Hon'ble High Court in authority 1994 ACJ 940 titled Vidya Devi and another vs. Madan Singh and others, wherein it has been laid down that a brother who was neither shown to be minor nor dependant on the deceased is not entitled to the compensation for the death of the deceased.”

4. I have given a careful thought to the submissions of the learned counsel for appellants. Deceased-Mahender Singh was bachelor and was working as Motor Mechanic. Appellants are elder brothers of the deceased. While discussing law on the point where the deceased has left behind legal representatives but no dependant, Hon'ble Apex Court in case of ***Smt. Manjuri Bera vs. The Oriental Insurance Company Limited and Anr.*** **2007(10) SCC 643** has observed in para 9, 11, and 12 as follows:-

“9. In terms of Clause (c) of Sub-section (1) of Section 166 of the Act in case of death, all or any of the legal representatives of the deceased become entitled to compensation and any such legal representative can file a claim petition. The proviso to said sub-section makes the position clear that where all the legal

representatives had not joined, then application can be made on behalf of the legal representatives of the deceased by impleading those legal representatives as respondents. Therefore, the High Court was justified in its view that the appellant could maintain a claim petition in terms of Section 166 of the Act.

.....

10. xx xx xx xx xx
11. *According to Section 2(11) of CPC, "legal representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the 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. Almost in similar terms is the definition of legal representative under the Arbitration and Conciliation Act, 1996, i.e. under Section 2 (1)(g).*
12. *As observed by this Court in **Custodian of Branches of BANCO National Ultramarino V. Nalini Bai Naique (AIR 1989 Supreme Court 1589)** the definition contained in Section 2(11) CPC is inclusive in character and its scope is wide, it is not confined to legal heirs only. Instead it stipulates that a person who may or may not be legal heir competent to inherit the property of the deceased can represent the estate of the deceased person. It includes heirs as well as persons who represent the estate even without title either as executors or administrators in possession of the estate of the deceased. All such persons would be covered by the expression 'legal representative'. As observed in **Gujarat State Road Transport Corporation V. Ramanbhai Prabhatbhai and Anr. (AIR 1987 Supreme Court 1690)** a legal representative is one who suffers on account of death of a person due to a motor vehicle*

accident and need not necessarily be a wife, husband, parent and child.”

5. Summing up the law with regard to the entitlement of legal representatives to claim compensation, it was observed that liability of the insurer in terms of Section 140 of the Act does not cease because of absence of dependency. As per ratio of law as laid down in case of ***Smt. Manjuri Bera (supra)***, it is clear that legal heir is entitled to compensation, even if he was not dependant on deceased. As per provisions of Section 168 of the Act, the Tribunal has a duty to make an award, determine the amount of compensation which is just and proper and specify the person or persons to whom such compensation would be paid.

6. In this case, deceased was bachelor and was working as motor mechanic. Appellants are brothers of the deceased. While appearing as PW1, Om Parkash (appellant no. 1) has stated that deceased was earning ₹8000/- per month and was contributing ₹5000/- towards household expenses. Their parents had died when the deceased was 4/5 years old and deceased was brought up by him and claimant-appellant no. 2-Narender Kumar. The deceased was unmarried at the time of his death. PW-1 in his examination-in-chief has stated that his monthly income was ₹5000/- per month and his other brother, namely, Narender Kumar (appellant no. 2) was also earning ₹4000/- per month. From the above statement of claimant-appellant no. 1, it is apparent that claimants were not dependants on the deceased but as per observations in case of ***Smt. Manjuri Bera (supra)***, they are entitled to compensation, the quantum of which shall not be less than compensation provided under Section 140 of the Act.

7. In view of my above discussion and applying the ratio of judgement in case of ***Smt. Manjuri Bera (supra)***, this appeal has merit and

is accepted. Claimants-appellants are awarded compensation of ₹50,000/- towards 'no fault liability' as provided under Section 140 of the Act. They are also entitled to compensation towards funeral expenses and loss of estate, which is quantified as ₹30,000/-. In all the amount of compensation to which claimants-appellants are entitled, is assessed as ₹80,000/-. They shall also be entitled to interest @ 7% per annum from the date of filing of claim petition till the date of actual payment.

8. Admittedly, the offending vehicle was insured with respondent no. 3-National Insurance Company Ltd. The Tribunal in para 17 of the Award has observed that driver of the offending vehicle was *ex parte*, as such, his driving licence has not come on record thereby depriving the insurer of the opportunity to get genuineness of the same verified.

9. Learned counsel for respondent no. 3-Insurance Company has argued that for want of driving licence of the driver on record, insurer cannot be put to liability to pay the compensation.

10. On giving a careful thought to submission of learned counsel for respondent no. 3-Insurance Company, I am of the opinion that respondent no. 3 being insurer of the offending vehicle is under liability to pay amount of compensation and it can be given recovery rights against owner of the offending vehicle only if it proves the breach of terms of insurance policy by the owner. No such evidence has come on record. Even if driver of the offending vehicle was *ex parte*, the insurer could call upon owner or summon him as witness alongwith driving licence of driver of the offending vehicle. A criminal case was also registered and attempt could be made by calling the record of criminal case to find if the police has taken driving licence of respondent no. 1-driver of the offending vehicle in

possession. Merely because, driver of the offending vehicle was *ex parte* in no manner absolves the insurer of its liability to pay amount of compensation or help in proving that respondent no. 1-driver of the offending vehicle was not having a valid driving licence at the time of accident. Consequently, the insurance company is not absolved from its liability to pay amount of compensation to claimants.

11. As a sequel of my observations above, this appeal has merit and is allowed. Award passed by the Tribunal is set aside and claimants are allowed compensation of ₹80,000/- for death of Mahender Singh in motor vehicle accident. They shall also be entitled to interest on the amount of compensation @ 7% per annum from the date of filing of claim petition till the date of actual payment. Respondent no. 3-insurer of the offending vehicle will be liable to pay the amount of compensation. The amount of compensation will be equally shared by claimants-appellants.

12. Claimants shall also be entitled to costs of this appeal. Counsel fee is assessed as ₹10,000/-.

March 01, 2018

jk

**(SURINDER GUPTA)
JUDGE**

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No