IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

FAO No.329 of 2013 (O&M)
Date of Decision: February 08, 2018.

National Insurance Company Limited

..........APPELLANT(s).

VERSUS

Kuldip Singh and others

........RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Ms. Vandana Malhotra, Advocate
for the appellant (s).
None for the respondents.

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SURINDER GUPTA, J.

This is appeal filed by National Insurance Company Limited against the award dated 08.10.2012 passed by Motor Accident Claims Tribunal, Gurdaspur (later referred to as 'the tribunal'), whereby claimant-respondent No.1 Kuldip Singh was allowed compensation amounting to ₹1,98,500/- for the death of his brother Prem Singh in a motor vehicle accident with Truck-Tralla bearing registration No.PB-11AB-1288 (later referred to as 'the offending vehicle'), which was insured with the appellant.

As the only issue involved in this appeal relates to quantum of compensation as awarded by Tribunal, detailed facts of the case are being skipped for the sake of brevity.

The tribunal computed the compensation as follows:-

(i)	Name of the deceased	Prem Singh
(ii)	Age of the deceased	55 years (as mentioned in petition and PMR)
(iii)	Income of the deceased	₹3500/- p.m.
(iv)	Deduction towards personal expenses @ 1/2	₹3500-₹1750=₹1750 p.m. i.e. ₹21000 p.a.

(v)	Multiplier applied 9	₹21000X9 = ₹189000/-
(vi)	General damages	₹9500
Total		₹1,98,500/-

Learned counsel for the appellant has argued that deceased was bachelor and the claimant is the younger brother of deceased, who was not dependant upon him. He has admitted in cross-examination that deceased was residing separately in a Gurudwara. Respondent No.1-claimant has his separate avocation of welding and earning ₹4000/- to ₹5000/- per month. As claimant-respondent No.1 was not dependant on the deceased, he is not entitled to any compensation under the Motor Vehicles Act, 1988 (for short-'the Act'). In support of his contention, learned counsel for the appellant has referred to the observations of Division Bench of Hon'ble Supreme Count in case of ***Sarla Verma and others Vs. Delhi Transport Corporation and Anr. (2009)6 SCC 121***.

I have given a careful thought to the submissions of the learned counsel for the appellant. Deceased Prem Singh was a bachelor and was a Pathi and living in Gurudwara. Claimant Kuldip Singh is the younger brother of the deceased. In case of ***Sarla Verma and others Vs. Delhi Transport Corporation and Anr. (supra)***, Hon'ble Apex Court has observed in para 15 of the judgement as follows:

> "15. .... Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependent. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependants, because they will either be independent and earning, or married, or be dependant on the father. Thus even if the deceased

> is survived by parents and siblings, only the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. ...."

Learned counsel for the appellant has also referred to the observations of Single Bench of this Court in case of ***Jyoti Pakash Vs. General Manager, Haryana Roadways, Sirsa and others 2017 (3) RCR (Civil) 90,*** wherein a Co-ordinate bench of this Court has observed that on death of a person in a motor accident, his brother who was not dependant on the deceased, is not entitled to compensation under Section 166 of the Act but he is entitled to compensation under Section 140 of the Act under no fault liability. 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. ....
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> 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.

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. The ratio of law as laid down in f ***Smt. Manjuri Bera Vs. The Oriental Insurance Company Limited and Anr.(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.

Deceased was working as *'Pathi'* in Gurudwara in village Chander Bhan. Kuldip Singh claimant is brother of the deceased. While appearing as PW1, he has nowhere stated in his affidavit Ex.PW1/A that he was dependant on the income of the deceased. He has stated that his brother was earning ₹3,500/- per month while he himself was earning ₹4000/- to ₹5000/- per month. The deceased was unmarried and even his name was not in the ration card which the claimant had got prepared for his family. From the above statement of claimant, it is apparent that he was not dependant on the deceased but as per the observations in case of ***Smt. Manjuri Bera Vs. The Oriental Insurance Company Limited and Anr.(supra),*** he is entitled to compensation, the quantum of which shall not be less than compensation for no-fault liability as provided under Section 140 of the Act. The tribunal has awarded compensation of ₹1,98,500/- to the claimant by taking him as dependant on deceased. This amount of compensation is on higher side. The claimant is awarded compensation of ₹50,000/- towards 'no fault liability' as provided under Section 140 of the Act. The claimant is 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 the claimant is entitled, is reassessed as ₹80,000/-. He is also entitled to interest at the rate allowed by the tribunal from the date of award till the date of actual payment. Insurance company shall be entitled to recovery of excess amount of compensation, if any, already paid from the claimant.

In view of my above discussion, the appeal is partly accepted and the award passed by the tribunal is modified to the extent as discussed above.

(SURINDER GUPTA)
JUDGE

February 08, 2018.
Sachin M.

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No