

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.250 of 2016

1. Sulekha Devi, Wife of Late Sanjay Sao,
2. Abhishek Kumar, Son of Late Sanjay Sao,
3. Rahul Kumar, Son of Late Sanjay Sao,
Petitioner 2 and 3 are minors having age of 13 years and 11 years under guardianship of their mother, the petitioner no. 1.
All residents of village and P.O. Pasarhi, P.S. Meskaur, District - Nawada.

... .. Petitioner/s

Versus

1. Viswanath Prasad Yadav Son of Late Shiv Shanker Gope, Resident of 60, Simli Nawabgan, Patna city, P.O. and P.S. Patna City, District - Patna.
2. Mantu Paswan, Son of Banke Paswan, Resident of Village - Kistipur, P.S. - Asthawa, District - Nalanda.
3. Manager Magma, H.D.I. General Insurance Company ltd., Magma House No. 24, Park Street Kolkata – 700016(W.B.)
4. Janki Devi, Wife of Basudeo Sao,
5. Basudeo Sao, Son of Late Lakhan Sao,
6. Mintu Kumari, Daughter of Basudeo Sao,
7. Ritu Kumari, Daughter of Basudeo Sao,
8. Ajay Kumar, Son of Basudeo Sao,
All residents of village - Pasaurhi, P.S. - Meskaur, District - Nawada.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Gopal Bohra
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 25-07-2019

The present writ petition has been filed for setting aside the order dated 25.8.2015 passed by the learned Additional District & Sessions Judge IVth, Nawada in M.V. Claim Case No. 122 of 2014/16 of 2015 whereby and whereunder the Respondents No. 4 and 5 have been ordered to be transposed as



claimant nos. 4 and 5 and further, it has been directed to add the brothers and sisters of the deceased in the categorization of claimants.

2. The brief facts of the case are that on 28.6.2014 at about 6:00 PM, when the deceased, Sanjay Sao, was going to his home on foot after performing his business at Nawada, he met with an accident and was hit by a truck resulting in his death. Thereafter, a police case was registered bearing Rajauli P.S. Case No. 128 of 2014 for the offences punishable under Section 279/304(A) of the Indian Penal Code on 28.6.2014. The petitioner no. 1 herein, wife of the deceased, had become destitute and she was not taken care by the mother and father of the deceased i.e. the Respondents No. 4 and 5 herein and even, two minor children of the petitioner no. 1 herein were deprived of care and support by the Respondents No. 4 and 5. Thereafter, the petitioner no. 1 and her two minor children filed a motor vehicle accident claim before the learned court of District Judge-cum-Motor Vehicle Accident Claim Tribunal, Nawada, which was registered as MACT Case No. 122 of 2014 wherein beside the owner and driver of the said offending truck, the Insurance Company and the father and mother of the deceased were made respondents. Subsequently, the MACT Case No. 122



of 2014 was transferred to the learned court of Additional District & Sessions Judge IVth, Nawada for disposal where it was registered as MV Claim Case No. 122 of 2014 / 16 of 2015.

3. It appears that the Respondents No. 4 and 5 herein filed a petition under Order 1 Rule 10 of the Code of Civil Procedure on 18.4.2015, praying therein to implead the parents, minor sister and younger brother of the deceased as claimants in the said motor vehicle claim case, whereafter the petitioners had filed rejoinder affidavit on 30.7.2015 wherein it was stated that the Respondents No. 4 and 5 herein have ten children (five sons and five daughters), out of which all the children except one son and one daughter are married. It has also been stated that as far as the unmarried Rinku Kumari is concerned, she is working as a teacher in the open school running at her parental house, hence, she was not dependent on the deceased. Moreover, as per the affidavit of the Respondent No. 4 i.e. the mother of the deceased filed in the aforesaid claim case, she was aged about 15 years as on 13.8.2015, which means that she is around 19 years as on date. As far as unmarried son, namely, Ajay Kumar is concerned, he is running a school in his house and was not dependent on the deceased and moreover, his age was disclosed in the affidavit filed by his mother in the aforesaid claim case as



20 years as on 13.8.2015, meaning thereby that he is about 24 years as on date.

4. The learned Additional District & Sessions Judge IVth, Nawada, by the impugned order dated 25.8.2018, has allowed the petition dated 18.4.2015 filed by the Respondents No. 4 and 5 herein and besides categorization the Respondents No. 4 and 5 as claimants, it has been further directed to categorize the brothers and sisters as claimants, who are, namely, Mintu Kumari, Rinku Kumar and Ajay Sao.

5. The learned counsel for the petitioners has submitted that the Respondents No. 4 and 5 have ten children (five sons and five daughters), out of which one son and one daughter are unmarried and rest of them are married and well-established and apart from the Respondents No. 4 and 5 being self-sufficient, they have the support of the others married sons and daughters, hence, they cannot be said to be dependent on the deceased, Sanjay Sao.

6. As far as the Respondent No. 6 herein i.e. Mintu Kumari is concerned, she is admittedly married to one Gautam Kumar of Gaya and she is residing in her inlaws' place, hence, she is not a dependent of the deceased, Sanjay Sao. As far as the Respondent No. 7 herein, namely, Rinku Kumari is concerned,



she is admittedly 21 years of age as on date and she is working in a school, hence, she cannot be said to be a dependent of the deceased, Sanjay Sao. Lastly, as regards Respondent No. 8 herein, namely, Ajay Kumar, it is submitted that he is admittedly 24 years of age and he is running a school, hence, he can also not be said to be a dependent of the deceased, Sanjay Sao.

7. This Court by an order dated 4.7.2016 had issued notices to the Respondents No. 4 to 8, while making the following observations:-

“The learned counsel for the petitioner submitted that the respondent No.4 and 5 are already on record as opposite party in the claim case filed by the petitioner. It is the consistent case of the petitioners that they are not entitled to any compensation amount as they are self earning persons and were not dependent on the deceased. But the trial Court by the impugned order has transposed them as claimants without considering the fact that petitioners and the respondent No.4 and 5 have got inconsistent case except both cannot be made claimant. Who is entitled to get / receive any share in the compensation amount that can be decided by the trial Court after evidences are adduced by the parties irrespective of the position of the parties other claimant or opposite party but at this stage by the impugned order the Court below has allowed the application.”

8. Despite valid service of notice on the Respondents No. 4 to 8, they have failed to appear, hence, it appears that they do



not intend to oppose the present petition.

9. I have heard the learned counsel for the petitioners and perused the materials on record, as also the impugned order dated 25.8.2015.

10. At this juncture, it would be relevant to reproduce hereinbelow Section 166 of the Motor Vehicles Act, 1988:-

166. Application for compensation.—

(1) An application for compensation arising out of an accident of the nature specified in sub-section (1) of section 165 may be made

—
(a) by the person who has sustained the injury; or

(b) by the owner of the property; or

(c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or

(d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be:

Provided that 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.

(2) Every application under sub-section (1) shall be made, at the option of the claimant, either to the Claims Tribunal having jurisdiction over the area in which the accident occurred, or to the Claims Tribunal within the local limits of whose jurisdiction the claimant resides or carries on business or within the local limits of whose



jurisdiction the defendant resides, and shall be in such form and contain such particulars as may be prescribed:

Provided that where no claim for compensation under section 140 is made in such application, the application shall contain a separate statement to that effect immediately before the signature of the applicant.]

11. Thus, in terms of Clause (c) of sub-section (1) of Section 166 of the Motor Vehicles Act, 1988, 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. Since the word “*legal representative*” has not been defined under the Motor Vehicles Act, 1988, aid has to be taken of Section 2(11) of the Code of Civil Procedure, 1908, which defines the expression “*legal representative*” as follows:-

"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"

12. In a catena of decisions, the Hon'ble Apex Court has held that since the expression “*legal representative*” has not been defined under the Motor Vehicles Act, 1988, one has to rely on the meaning of the said expression, as defined under Section 2(11) of the Code of Civil Procedure, 1908 and taking note of



Section 8 of the Hindu Succession Act, 1956, it will have to be decided as to who is the legal claimant of the amount of compensation to be awarded by the Motor Accident Claim Tribunal. According to Section 8 of the Hindu Succession Act, 1956, the property of a male Hindu dying intestate shall devolve:-

(a) firstly, upon the heirs, being the relatives specified in class I of the Schedule;

(b) secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule;

(c) thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased; and

(d) lastly, if there is no agnate, then upon the cognates of the deceased.

13. The schedule to the Hindu Succession Act, 1956 defines class I heirs of a male Hindu dying intestate to be the son; daughter; widow; mother; son of a predeceased wife etc., however, the father; daughters; brothers etc. of a deceased male Hindu are Class II heirs.

14. The aforesaid aspect of the matter has been considered by



the Hon'ble Apex Court in judgments rendered by the Hon'ble Gujarat High Court in First Appeal No. 1379 of 1986 dated 24.12.1986, as upheld by the Hon'ble Apex Court in a judgment rendered in **1987 AIR 1690 (Gujarat State Road Transport Corporation, Ahmedabad vs. Ramanbhai Prabhbhai & Anr.)**, as also in a judgment rendered by the Hon'ble Apex Court reported in **2007 (10) SCC 643 (Manjuri Bera vs. Oriental Insurance Company Ltd. & Anr.)**.

15. In a celebrated judgment rendered by the Hon'ble Apex Court in the case of **Smt. Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr., reported in (2009) 6 SCC 121**, the Hon'ble Apex Court has observed in paragraph no. 31 as follows:-

31. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent(s) and siblings is likely to be cut drastically. 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 dependant. 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 dependent on the father.

16. Having regard to the facts and circumstances of the case and the law laid down by the Hon'ble Apex Court, as also considering the various provisions of law involved in the present case, I am of the view that the Respondents No. 4 and 5 herein are already on record as opposite party in the claim case filed by the petitioners herein and moreover, on the one hand, it is the case of the petitioners that the Respondents No. 4 and 5 are not entitled to any compensation as they are self-earning in the present case and were not dependent on the deceased as also they have many other children to look after them, whereas on the other hand, the Respondents No. 4 and 5 have a case to the contrary, thus, considering the fact that the petitioners and Respondents No. 4 and 5 have got inconsistent case, the Respondents No. 4 and 5 herein cannot be made claimant and have correctly been arrayed as respondents in the said claim case. The question of entitlement of the legal representative of the deceased to receive compensation amount can only be decided by the trial court after evidences are adduced by the parties, irrespective of the position of the parties as claimant or opposite party. As far as the Respondents No. 6 to 8 herein are concerned, no application has been made by them for the



purposes of being added as parties to the said claim petition, hence, the impugned order passed by the learned trial court dated 25.8.2015, adding the said Respondents No. 6 to 8 herein as parties to the said claim case is also not only perverse but illegal.

17. Considering the facts and circumstances of the case and for the reasons mentioned herein, this Court finds that the impugned order dated 25.8.2015 passed by the learned court of Additional District & Sessions Judge, Nawada in MV Case No. 122 of 2014/16 of 2015 is fit to be set aside, hence, is accordingly quashed.

18. The present writ petition stands allowed.

(Mohit Kumar Shah, J)

ajay gupta/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	3.10.2019
Transmission Date	NA

