

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR
M. A. (C) No. 916 of 2013

Mohd. Rahim S/o Mohd. Yunus, Aged About 44 Years, Occupation Nothing, R/o Darripara Kawardha, Tahsil and Police Station Kawardha, Civil and Revenue District Kabirdham (C.G.).

---- Appellant

Versus

1. Santosh Kumar Chandrakar son of Dukhram Kurmi, Aged About 37 Years, R/o Village Nanapuri, Police Station Kunda, Tahsil Pandariya, Civil and Revenue District Kabirdham (C.G).
2. Branch Manager, The Oriental Insurance Company Limited, Kamthi Line, Rajnandgaon, Tahsil, Civil and Revenue District Rajnandgaon C.G.

---- Respondents

For Appellant	: Mr. Malay Kumar Bhaduri, Advocate
For Respondent No.1	: None
For Respondent No.2	: Mr. Hanuman Prasad Agrawal, Advocate

Hon'ble Shri Justice Parth Prateem Sahu
Judgment On Board

13/05/2019

1. This appeal has been filed by appellant/claimant under Section 173 of Motor Vehicles Act, 1988 (hereinafter referred to as 'M.V. Act') challenging the legality, validity and propriety of impugned award dated 06/08/2013 passed by Motor Accident Claims Tribunal, Kabirdham (Kawardha) (C.G.) (hereinafter referred to as 'Claims Tribunal') in Claim Case No.99/2010.
2. Brief facts for disposal of this appeal are that on 29/05/2008 at about 12.30 P.M., one Mohd. Imtiaz Khan alias Raju was travelling on

motorcycle bearing chassis No.MD2DDDZZZPWJ65276 and Engine No.DMUBPJ96730 of a black colour and going to Chilfi from Kawardha. When he was crossing one bridge of Sakri river, at that relevant time, one motorcycle driven by respondent No.1 bearing registration No.CG09-A-8047 (hereinafter referred to as 'offending motorcycle') dashed Mohd. Imtiaz Khan alias Raju. In the aforementioned accident, Mohd. Imtiaz Khan alias Raju sustained injuries over his right eye and internal part of body, due to which, he became unconscious. Thereafter, he was immediately taken to Hospital, but looking to the grievous injuries sustained by him, he was referred to B.R. Ambedkar Hospital at Raipur where he succumbed to those injuries on 30/05/2008. The matter was reported to concerned Police Station based on which crime was registered against respondent No. 1 for commission of offence under Sections 279, 337 and 304A of IPC.

3. Appellant/claimant filed claim application under Section 166 of M.V. Act before the competent Claims Tribunal claiming Rs.48,00,000/- as compensation against respondents on the grounds mentioned therein that deceased Imtiaz Khan alias Raju was his son and he was dependant on him.
4. Respondents No.1 filed reply to claim application and pleaded that accident took place due to rash and negligent driving of Mohd. Imtiaz Khan alias Raju himself and without proper investigation, criminal case was registered against him. It was further pleaded that on the

date of accident, offending motorcycle was insured with respondent No.2/Insurance Company, therefore, the liability, if any, would be on the Insurance Company.

5. Respondent No.2/Insurance Company submitted reply to claim application and denied the pleadings made in claim application with respect to the cause and manner of the accident. It has been pleaded that after death of Mohd. Imtiaz Khan alias Raju, an application under Section 166 of M.V. Act was filed by one Munija Parveen mentioning therein that she was mother of deceased. The claim application was registered as claim case No.66/2008, which was dismissed on 07/08/2010 as Munija Parveen died during pendency of the claim application. It was further pleaded in claim application filed by Late Munija Parveen, she specifically pleaded that she took body on *Supurdnama* and thereafter, performed last rituals' and in the criminal case also, it has been mentioned that the dead body of Imtiaz Khan alias Raju was handed over to his maternal uncle Asfaq Khan. It was also pleaded that after death of Munija Parveen, appellant herein filed an application under Order 22 Rule 3 of CPC for impleading him as one of the claimants on 24/07/2010 i.e. after about 8 months from the date of death of Munija Parveen. The said application was dismissed on 07/08/2010 wherein present appellant was not found to be legal representatives of Munija Parveen. It has been lastly pleaded that contents and grounds mentioned in the present claim

application are false in view of earlier claim application filed by Munija Parveen, mother of the deceased.

6. Learned Claims Tribunal while appreciating pleadings and evidence led by respective parties held that accident took place due to rash and negligent act of respondent No.1, offending motorcycle was insured with respondent No.2/Insurance Company, there was no violation of conditions of insurance policy and awarded a total compensation of Rs.50,000/-.
7. Learned counsel appearing for appellant submitted that amount of Rs.50,000/- was awarded to the appellant under the provisions of Section 140 of M.V. Act, which is towards no fault liability. He further submitted that there is no evidence available on record with respect to divorce between Munija Parveen and present appellant. He lastly submitted that occasionally, deceased used to come to the house of appellant and resides with him and he was dependant on the income of deceased.
8. Per contra, learned counsel appearing for respondent No.2/Insurance Company submitted that earlier one claim application bearing No.66/2008 was filed by mother of deceased and during pendency of said claim application, mother of deceased namely Munija Parveen died. He further submitted that application filed under Order 22 Rule 3 of CPC by appellant was dismissed by recording a finding that appellant has not been held to be legal representatives of Munija Parveen mother of deceased. He further submitted that order dated

07/08/2010 was not challenged by appellant, therefore, it attained its finality. He lastly submitted that looking to the fact that appellant was residing separately with his wife and deceased since last 24-25 years, therefore, the learned Claims Tribunal treating the appellant as one of the relatives, awarded a total sum of Rs.50,000/- as no fault liability.

9. I have heard learned counsel appearing for parties and perused entire record carefully.
10. From perusal of record would show that respondent No.2/Insurance Company has produced copy of claim application filed by Munija Parveen, which is marked as Ex. NA-2. Perusal of Ex. NA-2 shows that death of deceased Mohd. Imtiaz Khan alias Raju took place on 30/05/2008 and on 28/08/2008, mother of deceased Munija Parveen filed an application under Section 166 of M.V. Act for grant of compensation. In paragraph-8 of claim application, she stated that her husband has deserted her since last 24-25 years and she was living with her son late Mohd. Imtiaz Khan alias Raju separately and somehow maintain her son and herself. She further pleaded that she was dependant on the income of deceased.
11. A copy of order deciding application under Order 22 Rule 3 of CPC has been filed by appellant in the earlier claim case No.66/2008 decided on 07/08/2010, which was marked as Ex. NA-1. Perusal of order-sheet recorded by Motor Accident Claims Tribunal, Kabirdham in Claim Case No.66/2008 specifically shows that there was a finding

that as Munija Parveen was deserted by appellant since last 20-25 years and she was residing separately with her son, i.e. deceased Imtiaz Khan alias Raju, therefore, appellant was not a legal representative of deceased Munija Parveen and dismissed the application under Order 22 Rule 3 of CPC as well as claim application.

- 12.** The aforementioned order of dismissal of application under Order 22 Rule 3 of CPC whereby right of appellant has been decided and dismissed the application for impleading him as a party as not finding him to be legal heirs of deceased Munija Parveen, therefore, finding of learned Claims Tribunal in Claim Case No.66/2008 become final.
- 13.** On the ground of dependency of appellant on deceased, he examined himself only and has not examined any other relative or friend to support his claim to prove that he was dependant on deceased in any manner. He admitted in paragraph-5 of his cross-examination that all upbringing and expenditure towards education and maintenance etc. was performed by his wife. He also admitted that he has not filed any application under Section 166 of M.V. Act for claiming compensation immediately after accident as he was not aware about the death of Imtiaz Khan alias Raju.
- 14.** From the aforementioned facts and documentary evidence available on record, it is clear that since tender age of late Imtiaz Khan alias Raju, he was residing with his mother separately, therefore, pleading made in claim application filed by Munija Parveen that she and her

son were deserted by her husband (appellant) cannot be said to be incorrect fact pleaded inasmuch as when there is admission on the part of appellant that all upbringing and maintenance etc. has been performed by his wife. Though appellant has pleaded that deceased used to give expenses to him, but except self oral evidence, there is no other clinching evidence placed on record by appellant by producing any other relative or friend to prove this fact, therefore, statement made by appellant that deceased used to give expenses to him is not found to be proved.

15. In view of aforementioned discussions and material available on record, in the opinion of this Court, learned Claims Tribunal has not committed any error in recording a finding that appellant was not dependant on the deceased Imtiaz Khan alias Raju.
16. Now the question arises for consideration before this Court is that what is quantum of compensation for which appellant will be entitled for.
17. The provisions provided under Section 166 of M.V. Act for filing an application for compensation reads as under :-

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.]

3^{***}]

(4) The Claims Tribunal shall treat any report of accidents forwarded to it under sub-section (6) of section 158 as an application for compensation under this Act.]”

18. A bare reading of Clause (c) of sub-section (1) of Section 166 of M.V. Act provides that in a death case application can be filed by all or any of the legal representatives of deceased.
19. The provisions of Section 140 of M.V. Act provides for liability to pay compensation in certain cases on the principle of no fault liability. The provisions of Section 140 of M.V. Act is reproduced herein below :-

140. Liability to pay compensation in certain cases on the principle of no fault.—(1) Where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section.

(2) The amount of compensation which shall be payable under sub-section (1) in respect of the death of any person shall be a fixed sum of [fifty thousand rupees] and the amount of compensation payable under that sub-section in respect of the permanent disablement of any person shall be a fixed sum of 2[twenty-five thousand rupees].

(3) In any claim for compensation under sub-section (1), the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person.

(4) A claim for compensation under sub-section (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement.

(5) Notwithstanding anything contained in sub-section (2) regarding death or bodily injury to any person, for which the owner of the vehicle is liable to give compensation for relief, he is also liable to pay compensation under any other law for the time being in force:

Provided that the amount of such compensation to be given under any other law shall be reduced from the amount of compensation payable under this section or under section 163A.]

- 20.** The entitlement and right to file an application is definitely provided to by all or any of the legal representatives of deceased. Appellant

being father of deceased is one of legal representatives and is having right to file an application under the M.V. Act.

- 21.** The issue with respect to maintaining an application by a person not dependant on the deceased has been dealt with by Hon'ble Supreme Court in the matter of **Manjuri Bera (Smt.) v. Oriental Insurance Company Ltd. and another**¹, in which, Hon'ble Supreme Court after considering earlier judgments held as under :-

“12. As observed by this Court in *Custodian of Branches of BANCO National Ultramarino v. Nalini Bai Naique*, AIR 1989 SC 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 SRTC v. Ramanbhai Prabhatbhai*, (1987) 3 SCC 234 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.

13. There are several factors which have to be noted. The liability under Section 140 of the Act does not cease because there is absence of

¹ (2007) 10SCC 643

dependency. The right to file a claim application has to be considered in the background of right to entitlement. While assessing the quantum, the multiplier system is applied because of deprivation of dependency. In other words, multiplier is a measure. There are three stages while assessing the question of entitlement. Firstly, the liability of the person who is liable and the person who is to indemnify the liability, if any. Next is the quantification and Section 166 is primarily in the nature of recovery proceedings. As noted above, liability in terms of Section 140 of the Act does not cease because of absence of dependency.

14. Section 165 of the Act also throws some light on the controversy. The Explanation includes the liability under Sections 140 and 163-A.

15. Judged in that background where a legal representative who is not dependant files an application for compensation, the quantum cannot be less than the liability referable to Section 140 of the Act. Therefore, even if there is no loss of dependency the claimant if he or she is a legal representative will be entitled to compensation, the quantum of which shall be not less than the liability flowing from Section 140 of the Act. The appeal is allowed to the aforesaid extent. There will be no order as to costs. We record our appreciation for the able assistance rendered by Shri Jayant Bhushan, the learned Amicus Curiae.”

22. In the matter of **Manjuri Bera (Smt.)** (supra), Hon'ble Supreme Court has categorically held that whether a legal representative filed an application for compensation under Section 166 of M.V. Act, but is not dependant, the quantum cannot be less than the fixed amount provided under Section 140 of M.V. Act.
23. Right to file an application under M.V. Act for compensation by a dependant on the deceased seeking compensation on the ground of loss of dependency stands on different footing. Compensation for loss of relative have a right to claim compensation on account of loss of estate whereas compensation on account of loss of dependency by a dependant is for the loss of income suffered by the claimant/legal heir/legal representative which he was getting for his survival being dependant on the deceased. In the case at hand, appellant may be a relative of deceased but was not dependant upon deceased which is evident from the facts and evidence available on record.
24. In the case at hand, learned Claims Tribunal has already awarded an amount of Rs.50,000/- in an application under Section 140 of M.V. Act vide its award dated 06/08/2013.
25. In view of aforementioned law laid down by Hon'ble Supreme Court and the findings recorded in the preceding paragraphs that appellant was not dependant on the deceased, learned Claims Tribunal has not committed any error in holding entitlement of appellant for a compensation of Rs.50,000/-, which cannot be said to be erroneous.

- 26.** For the foregoing discussions, I do not find any good ground raised by learned counsel for appellant. The appeal being devoid of any substance, is liable to be and is hereby dismissed.

Sd/-

(Parth Prateem Sahu)
Judge