

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

209

FAO-5673-2002 (O&M)
Date of Decision : 02.09.2019

Gainda Ram

.... Appellant

Versus

Maya Ram and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Ms.Deepali Puri, Advocate
for the appellant.

Mr.Deepak Gupta, Advocate
for the respondents.

RAMENDRA JAIN, J. (ORAL)

The driver and owner of the offending vehicle bearing registration No.HR-02A-3506 filed the instant appeal against award dated 03.09.2002 passed by Motor Accident Claims Tribunal, Yamuna Nagar at Jagadhri (for short, 'the Tribunal') whereby respondents No.1 and 2 were awarded compensation of Rs.1 lakh along with interest @ 9% per annum from the date of filing the claim petition till realisation on account of death of their brother Om Parkash, unmarried and issueless in a motor vehicular accident while accepting the claim petition of the respondents filed under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act').

Learned counsel for the appellant contends that learned Tribunal failed to appreciate that both the respondents were major. They, being major and brother of the deceased Om Parkash, were not dependant upon him. Respondent No.1-Maya Ram as PW2 admitted before the police in his statement under Section 161 Cr.P.C (Ex.R2) that he was Sarpanch of village, whereas respondent No.2 never appeared in the witness box before the Tribunal, claiming his dependency upon deceased Om Parkash. Therefore, learned Tribunal ought to have dismissed claim petition, observing that the claimants were not dependant upon deceased Om Parkash. But, it has illegally awarded compensation of Rs.1 lakh to the claimant. In support of his argument, she relied upon a decision of Hon'ble Supreme Court in **M/s Mundian Carriers (India) vs. Kamal Kumar and others, 2017(4) RCR (Civil) 27.**

On the other hand, learned counsel for the respondents, refuting the above submissions, contends that in Section 166(1)(c) of the Act words 'legal heirs' are used and not "dependants". Therefore, no interference is warranted in the impugned award. Even, as per Section 110 A of the Act, legal heirs of the deceased, who dies in a motor vehicular accident, are held entitled to compensation. In support of his argument, learned counsel for the respondents has relied upon the decisions of this Court in **Gurmail Singh vs. Pepsu Road Transport Corporation,**

Patiala, 2003 ACJ 225, and **Girdhari Lal vs. Radhey Shyam and others, 1994(1) ACJ 168.** He has also relied upon a decision of Allahabad High Court in **Oriental Insurance Company Ltd. vs. Naresh Chandra Agrawal and others, 2000(39) ALR 192.** He further contends that even, if it is presumed that respondents/claimants were not dependants upon deceased-Om Parkash, in that eventuality 10% of the total compensation ought to have been granted to them.

Having given thoughtful consideration to the submissions, this Court finds the instant appeal merits acceptance for the reasons to follow.

It is not disputed that respondent No.1 was Sarpanch of village at the time of death of his brother Om Parkash in a roadside accident. Therefore, by any stretch of imagination, he could not have been termed as a 'dependant' upon Om Parkash. Respondent No.2-claimant did not appear in the witness box, though he claimed himself to be a dependant upon deceased-Om Parkash. Both the respondents-claimants did not lead any evidence on record that they were ever dependant upon deceased Om Parkash. Thus in the considered opinion of the Court, the learned Tribunal has illegally accepted the claim petition. Considering, the above fact, it is held that respondents were not dependants upon deceased Om Parkash.

Consequently, the instant appeal is accepted. The

impugned award is set aside. However, the respondents are held entitled to Rs.50,000/- as compensation under Section 140 of the Act under the head “no fault liability”, which would also cover the judgment rendered by Allahabad High Court **Naresh Chandra Agrawal's case (supra).**

September 02, 2019
anju

(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No