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

FAO 3356-2004 (O&M)
Date of decision: 11.07.2019

Jagdish Lal and others

…..**Appellants**

versus

Ram Chander and others

……**Respondents**

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.Parminder Singh, Advocate for the appellants
Mr.R.C.Kapoor, Advocate for respondent no.3

1. *Whether Reporters of Local Newspapers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

Kuldip Singh, J.

Claimants have filed this appeal against award dated 10.3.2004 passed by Motor Accident Claims Tribunal, Karnal (for short, 'the Tribunal') , as they are not satisfied with the compensation awarded by the Tribunal.

Facts of the case are that Sheela Rani, wife of claimant No.1 Jagdish Lal Ahuja and mother of claimant nos.2 to 4, was running a manufacturing unit in the name and style of M/s Kamal Leathers at Village Kachhwa, District Karnal. She was an income tax payee. Her date of birth as per record is 5.3.1947. On 26.5.2002, Sheela Rani was travelling in a car bearing registration number HR-30C-0012 bring driven by her husband Jagdish Lal Ahuja and was going from Karnal town towards Prem Nagar, Karnal. Jagdish Lal Ahuja was driving the car at a very moderate speed on the left side of the road. When they reached down side the railway over-bridge towards Prem Nagar, the offending Trax Jeep bearing registration number MKE-TB-5927 being driven by respondent no.1- driver, namely, Ram Chander, came at a very fast speed in a rash and negligent manner from the opposite side. Respondent no.1 could not control the Trax Jeep and hit the motorcycle of one Sandep Kumar and then Trax Jeep lost the control and hit the car. Deceased received multiple injuries. She succumbed to the injuries at Civil Hospital, Karnal. It is claimed that the deceased was earning Rs.16,000/- to Rs.20,000/- per month. Because of the death of the deceased, the claimants have been deprived of the income of the deceased. They have also been deprived of love and affection of the deceased.

In the reply, respondent no.1 driver of the Trax Jeep denied that the deceased was running a leather unit. Her income was also denied. It was stated that the accident, if any, took place due to rash and negligent driving of claimant no.1 Jagdish Lal Ahuja, who being an old person, was not able to properly drive the car. He tried to take a turn towards right hand side over bridge without giving signal or indicator and struck against the incoming vehicle. Respondent no.1 also denied that accident took place due to negligence of the Trax Jeep driver. The Insurance company also denied the claim. From the pleadings, following issues were framed:-

1. *Whether the accident in question took place due to the rash and negligent driving of Jeep bearing No.MKE-TB-5927 by its driver –respondent no.1, if so its effect? OPP*
2. *If issue no.1 is proved, whether the claimants are entitled to receive any compensation, if so how much and from whom? OPP*

3. Whether the respondent no.1 driver of the offending vehicle was not holding a valid and effectively driving licence at the time of accident, if so its effect? OPR

4. Relief.

While deciding issue no.1, the Tribunal held that the accident took place due to rash and negligent driving of driver of the Trax Jeep.

The Tribunal took up issue nos.2 and 3 together and took the view that income tax return for only two years have been produced. In the income tax return for the year 2001-2002, income has been shown as Rs.1,71,470/-. In the next income tax return for the year 2002-2003 (Ex.P2), which was filed after her death, income has been shown to be Rs.2,10,000/-. The Tribunal relied upon the income tax return for the year 2001-2002 filed by the deceased Sheela Rani herself and after deducting the income tax of Rs.23,916/-, took the view that the income of the deceased was Rs.1,40,000/-. It was further held that claimant no.1 is employed in Labour Department, Haryana and was having independent income. Loss of dependency taken to be 40%, which was calculated as Rs.56,000/- per annum. The multiplier of 8 was applied and compensation calculated as Rs.4,48,000/-. Rs.2000/- on account of funeral expenses were allowed. Rs.5000/- were allowed on account of loss of consortium and total compensation of Rs.4,55,000/- was allowed.

I have heard learned counsel for the parties and have also carefully gone through the record.

First of all, this Court is to examine as to whether income tax return for year 2001-2002 or 2002-2003 is to be relied upon. The Tribunal relied upon the income tax return for the year 2001-2002, wherein income was shown as Rs.1,71,470/- and income tax of Rs.25,411/- was paid. In the income tax return for the year 2002-2003, which was filed on 22.10.2002, after the death of the deceased, income of M/s Kamal Leather being run by the deceased was shown to be Rs.210,372/- and the income tax of Rs.37,772/- was paid.

I am of the view that the Tribunal erred in discarding the income tax return for the year 2002-2003 only on the ground that it was filed after the death of the deceased. The Tribunal did not appreciate that the income tax authorities did not accept this return to be correct. Admittedly, after the year 2001-2002, income of the firm M/s Kamal Leather was bound to increase. Income tax authorities made its own assessment. After examining the income declared in the said return and examining the expenses and the sale, the income tax officer assessed the income for the said year at Rs.2,50,000/- and accordingly issued a demand notice under Section 340B of the Income Tax Act to the assessee. The Tribunal had discarded the income tax return for the year 2002-2003 on the ground that it was filed after the death of the deceased and possibly it was exaggerated. However, since the income tax authority has independently made the assessment at Rs.2,50,000/-, therefore, income of M/s Kamal Leather being run by the deceased is to be taken at Rs.2,50,000/-, as assessed by the income tax authority for the year 2002-2003.

Since, date of birth of deceased is 5.3.1947, she was about 55 years and 2 ½ months old at the time of accident. In such circumstances, multiplier of 9 is to be applied, she being beyond the age of 55 years.

Learned counsel for the respondent-Insurance company has vehemently argued that in this case multiplier system is not to be applied.

The deceased was running a factory and there is nothing on file to show that the factory was closed. Therefore, the claimants were still enjoying the income of the deceased. The husband of the deceased has retired from service. Three sons of the deceased, who are claimants, are major and are married, therefore, they are no more dependents. It is stated that though they are LRs of the deceased but for the purpose of calculating the loss of dependency, multiplier system is not to be applied and a lump sum compensation is to be awarded. For this purpose, reliance is placed upon authority in the case of *New India Assurance Co. Ltd. Vs. Vinish Jain and others, [SLP (C) No.13931 of 2017 decided on 23.2.2018]*, which is marked as non-reportable, therefore, this cannot be taken as a precedent.

Further reliance has been placed on the authority of this Court in *Shiv Kumar Aggarwal vs. Bakshish Singh and others, (FAO No.1473-2009, decided on 8.5.2014)*. In the said case, claim was made by the younger brother of the deceased, who was held to be not dependent. However, in the present case, claimants are husband and major sons of the deceased.

Similarly, in the case of *Om Parkash and another vs. Rajesh and others (FAO 2499-2001, decided on 1.3.2018),* deceased was the younger brother of the claimant.

Authority in the case of *Chandrawati vs. Ram Sewak and another 2014(7) RCR (Civil) 1262* of Allahabad High Court is regarding married daughters, which is distinguishable from the married sons.

Similarly, authority in the case of *Manjuri Bera vs. Oriental Insurance Co. Ltd. and another, 20078 ACJ 1279* is regarding married daughter, who was held to be not dependent.

Learned counsel for the appellants has relied upon the authority of Supreme Court in the case of *Gujarat State Road Transport Corporation, Ahmedabad vs. Ramanbhai Prabhatbhai and another*, *1987 AIR (SC) 1690* and has relied upon the following observations to press that the claimants being the legal heirs are entitled to compensation:-

> *11. Clauses (b) and (c) of sub-section (1) of section 110-A of the Act provide that an application for compensation arising out of an accident may be made where death has resulted from the accident by all or any of the legal representatives of the deceased or by any agent duly authorised by all or any of the legal representatives of the deceased. The proviso to sub-section (1) of section 110-A provides 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. The expression 'legal representative' has not been defined in the Act. Section 2 (11) of the Code of Civil Procedure, 1908 defines 'legal representative' as 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. The above definition, no doubt, in terms does not apply to a case*

before the Claims Tribunal but it has to be stated that even in ordinary parlance the said expression is understood almost in the same way in which it is defined in the Code of Civil 'Procedure. A legal representative ordinarily means a person who in law represents the estate of a deceased person or a person on whom the estate devolves on the death of an individual. Clause (b) of sub-section (1) of section 110-A of the Act authorises all or any of the legal representatives of the deceased to make an application for compensation before the Claims Tribunal for the death of the deceased on account of a motor vehicle accident and clause (c) of that sub-section authorises any agent duly authorised by all or any of the legal representatives of the deceased to make it. The proviso to sub-section (1) of section 110-A of the Act appears to be of some significance. It provides that the application for compensation shall be made on behalf of or for the benefit of all the legal representatives of the deceased. Section 110-A(1) of the Act thus expressly states that (i) an application for compensation may be made by the legal representatives of the deceased or their agent and (ii) that such application shall be made on behalf of or for the benefit of all the legal representatives. Both the persons or person who can make an application for compensation and the persons for whose benefit such application can be made are thus indicated in section 110-A of the Act.

The legal representatives of the deceased can maintain application under Section 166 of Motor Vehicles Act, 1988.

In the present case, there is nothing on file that the unit is still running. Husband of the deceased was a government employee at the time of death of the deceased. In the absence of any proof, it cannot be assumed that the unit is still running. In any case, after the death of the deceased, even if the unit is running, there is a loss of management on account of death of the deceased, who was looking after the entire affairs of the unit.

I am of the view that since the deceased was working and her income for the year 2002-2003 was assessed by the income tax authority to be Rs.2,50,000/- and his sons are major, contribution of the deceased to the family is to be taken as 50%, which comes to Rs.1,25,000/-. Even if it is viewed from another angle i.e. loss of management, the deceased must be contributing Rs.10,000/- per month on account of management and on account of death of the deceased, even in that case loss of management on account of death comes to Rs.1,20,000/- per annum which is roughly same amount as contribution of the deceased calculated above.

Therefore, I do not agree with the argument of counsel for the insurance company that multiplier system should not be applied. Income of the deceased was coming to the family. Out of the said income, she must be supporting the family consisting of her husband and she must be paying something to her major sons and their children. In this way, there is loss to the major sons also. Therefore, loss of dependency of the claimants comes to Rs1,25,000/- x 9 = Rs.11,25,000/-. Rs.70,000/- on account of loss of estate, loss of consortium and funeral expenses are allowed. Total compensation comes to Rs.11,95,000/-. Thus, the claimants are entitled to the said amount. Out of the said amount, a fixed sum of Rs.Two lakhs each shall go to the claimant nos.2 to 4, who are major sons of the deceased and remaining sum shall go to the claimant no.1 husband of the deceased. The enhanced compensation shall be payable along with interest @ 7.5 % per annum from the date of filing of claim petition till realization. Findings of the trial Court on issue no.1 are according modified.

Appeal is accordingly allowed.

11.07.2019 **(Kuldip Singh)**
gk **Judge**

Whether speaking/ reasoned: Yes
Whether Reportable: Yes