

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

F.A.O No. 3167 of 2010

Date of decision:- 21.11.2019

Malkiat Singh

...Appellant

Versus

Isham Singh & anr.

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. D.S. Randhawa, Advocate
for the appellant

Mr. Ravinder Arora, Advocate
for respondent No. 2-Insurance Co.

RITU BAHRI J.

1. The present appeal has been preferred by the claimant-appellant, seeking enhancement of the amount of compensation awarded by the learned Motor Accident Claims Tribunal, Kurukshetra (for short, 'the Tribunal') to the tune of Rs.50,000/- vide impugned award dated 03.06.2009 on account of death of his mother Bala Devi in a road accident on 11.06.2007.

2. The claimant had filed the claim petition under Section 163-A of the Motor Vehicles Act stating therein that on 11.06.2007, Smt Bala Devi and Smt. Palo Devi (since deceased) along with their brother Baru Ram loaded the tomato crop from village Dhanora in a Sawraj Mazda canter bearing No. HR-56-3565. They were travelling in the aforesaid canter with their tomato crop. Om Ram Pal was also travelling in the said canter. Baru Ram was driving the said canter and when they reached in the area of police station, Barot, they found one truck parked on the road near a brick kiln and

the Sawraj Mazda Canter dashed against the said parked truck. As a result

of the impact, all the occupants of the above canter suffered multiple, serious and grievous injuries. Smt. Bala Devi, Smt. Palo Devi and Baru Ram died on account of the injuries suffered by him. DDR No. 2 was registered at P.S. Barot District Meerut on 12.06.2007

3. From the pleading of the parties, the Tribunal framed the following issues:-

1. *Whether Palo Devi and Bala Devi have died on account of use of vehicle i.e Swaraj Mazda canter No. HR-56-3565 on a public way? OPP*
2. *If issue No. 1 is proved to what amount of compensation the claimants are entitled to and from whom? OPP*
3. *Whether the claim petitions are not maintainable under Section 163-A of the Motor Vehicles Act? OPR*
4. *Whether the claim petitions are bad for misjoinder and non joinder of necessary parties?OPR*
5. *Whether the petitioners have no locus standi and or cause of action to file and maintain the present claim petitions? OPR*
6. *Whether this Court has no jurisdiction to entertain and try the present claim petitions? OPR.*
7. *Relief.”*

4. However, the learned Tribunal held that since Palo Devi, Balo Devi and Baru Ram were gratuitous passengers in the Swaraj Mazda canter bearing No. HR-56-3565 and there is no documentary evidence regarding any agricultural land on which Palo Devi, Balo Devi and Baru Ram would have been sowing tomatoes crops, therefore, the claim is not held to be payable as per terms and conditions of the policy. However, the owner of

Swaraj Mazda canter bearing No. HR-56-3565 was held liable to pay the compensation of Rs.50,000/- as compensation in view of Section 140 of the Motor Vehicles Act.

5. It is not in dispute between the parties that the accident had taken place, as the accident had been duly proved by the claimants/appellants. The claimants are not to prove the accident, as they had filed the petition under Section 163-A of the Act.

6. After hearing learned counsel for the parties, the two questions arises for consideration before this Court would be (i) whether legal heirs are entitled for compensation even if they are dependent (ii) whether recovery rights can be given to Insurance Company in view of judgment passed in *National Insurance Co. Ltd vs. Baljit Kaur, 2004 (2) SCC 1*

7. With regard to first question, reference at this stage can be made to a judgment of this Court in a case of *Mothu Singh and others vs. Kewalpreet Singh and others, 2016 (5) R.C.R (Civil) 984* wherein this Court while relying upon judgment of Hon'ble the Supreme Court of India in a case of *Montford Brothers of St. Gabriel and another vs. United India Insurance and another etc, 2010 STPL (Web) 53 SC* has observed that it is irrelevant whether the claimants who are sons and daughters of their deceased mother are major and are dependent on their mother and father. It is not merely the case of dependents who are entitled to compensation. Sons and daughters are covered under Section 165 of the Motor Vehicles Act. It will be wrong to assume that if a claimant is not dependent on a deceased then the claim cannot be prosecuted at all. A legal heir suffers a loss by the fact that the person to whom he is such a heir dies in an accident.

In para 4, 8 and 9, it has been observed as under:-

4. *Reference has been made to a judgment of Hon'ble the Supreme Court of India in a case of **Montford Brothers of St Gabriel and another vs. United India Insurance and another etc., 2014 STPL (Web) 53 SC** wherein in para 8, 11 and 16, it has been observed as under:-*

“8. The only issue noted above requires to look into Section 166 of the Motor Vehicles Act, 1988, (hereinafter referred to as ‘The Act’). Sub-section (1) of Section 166 is relevant for the purpose. It provides thus:

“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.

11. Learned counsel for the Insurance Company tried to persuade us that since the term ‘legal representative’ has not been defined under the Act, the provision of Section 1-A of the Fatal Accidents Act, 1855, should be taken as guiding principle and the claim should be confined only for the benefit of wife, husband, parent and child, if any, of the person whose death has been caused by the accident. In this context,

he cited judgment of this Court in the case of Gujarat State Road Transport Corporation, Ahmedabad vs. Raman Bhai Prabhatbhai & Anr.1. In that case, covered by the Motor Vehicles Act of 1939, the claimant was a brother of a deceased killed in a motor vehicle accident. The Court rejected the contention of the appellant that since the term 'legal representative' is not defined under the Motor Vehicles Act, the right of filing the claim should be controlled by the provisions of Fatal Accident Act. It was specifically held that Motor Vehicles Act creates new and enlarged right for filing an application for compensation and such right cannot be hedged in by the limitations on an action under the Fatal Accidents Act. Paragraph 11 of the report reflects the correct philosophy which should guide the courts interpreting legal provisions of beneficial legislations providing for compensation to those who had suffered loss.

“11. We feel that the view taken by the Gujarat High Court is in consonance with the principles of justice, equity and good conscience having regard to the conditions of the Indian society. Every legal representative who suffers on account of the death of a person due to a motor vehicle accident should have a remedy for realisation of compensation and that is provided by Sections 110-A to 110-F of the Act. These provisions are in consonance with the principles of law of torts that every injury must have a remedy. It is for the Motor Vehicles Accidents Tribunal to determine the compensation which appears to it to be just as provided in Section 110-B of the Act and to specify the person or persons to whom compensation shall be paid. The determination of the compensation payable and its apportionment as required by Section 110-B of the Act amongst the legal representatives for whose benefit an

application may be filed under Section 110-A of the Act have to be done in accordance with well-known principles of law. We should remember that in an Indian family brothers, sisters and brothers' children and some times foster children live together and they are dependent upon the bread-winner of the family and if the bread-winner is killed on account of a motor vehicle accident, there is no justification to deny them compensation relying upon the provisions of the Fatal Accidents Act, 1855 which as we have already held has been substantially modified by the provisions contained in the Act in relation to cases arising out of motor vehicles accidents. We express our approval of the decision in Megjibhai Khimji Vira v. Chaturbhai Taljabhai, (AIR 1977 Guj.195) and hold that the brother of a person who dies in a motor vehicle accident is entitled to maintain a petition under Section 110-A of the Act if he is a legal representative of the deceased."

16. A perusal of the judgment and order of the Tribunal discloses that although issue no.1 was not pressed and hence decided in favour of the claimants/appellants, while considering the quantum of compensation for the claimants the Tribunal adopted a very cautious approach and framed a question for itself as to what should be the criterion for assessing compensation in such case where the deceased was a Roman Catholic and joined the church services after denouncing his family, and as such having no actual dependants or earning? For answering this issue the Tribunal relied not only upon judgments of American and English Courts but also upon Indian judgments for coming to the conclusion that even a religious order or organization may suffer considerable loss due to death of a voluntary worker. The Tribunal also went on to decide who should be entitled for compensation as legal representative of the deceased and for that

purpose it relied upon the Full Bench judgment of Patna High Court reported in AIR 1987 Pat. 239, which held that the term 'legal representative' is wide enough to include even "intermeddlers" with the estate of a deceased. The Tribunal also referred to some Indian judgments in which it was held that successors to the trusteeship and trust property are legal representatives within the meaning of Section 2(11) of the Code of Civil Procedure."

8. *To answer this question, reference can be made to a judgment of this Court in a case of **New India Assurance Co. Ltd. vs. Kuldeep Singh and others, passed in FAO No. 308 of 2013, decided on 06.02.2013**, wherein in para 2 of the judgment, it has been observed as under:-*

"2. When the assessment is made on the basis of dependency, loss to estate which is one of the heads of claim becomes merely a conventional head of claim to be satisfied. On the other hand, when the sons or daughters who are majors themselves and who may not be dependents, the loss to estate could become considerable for the sons and daughters who are legal heirs to the father. If the deceased male would have earned and left an estate that could have been inherited by the children that should be quantified as amount payable. In this case since the deceased was 54 years and he would have earned for the rest of his productive life and made possible an accrual to an estate that could have fallen to the hands of the legal heirs, a complete rejection of

claim is simply not possible. In this case, if the Court has assessed the income of the deceased at `6,200/-, I would assume such a person would have left behind an accrual not less than the amount which is already determined. Even if the claim cannot be sustained the loss of dependency, it could be justified as going towards loss to estate.”

9. *Thus, it is irrelevant whether the appellants who are sons and daughters of their deceased mother, are major and are dependent on their mother and father. It is not merely the class of dependants who are entitled to compensation. They are covered under Section 165 of the Motor Vehicles Act. It will be wrong to assume that if a claimant is not dependant on a deceased, the claim cannot be prosecuted at all. A legal heir suffers a loss by the fact that the person to whom he is such a heir dies in an accident.*

8. In the present case, it is not in dispute that the deceased-Bala Devi was gratuitous passenger in Swaraj Mazda Canter No. HR-56-3565. Reference has further been made to Annexure R-6 i.e the copy of the Insurance claim filed by Isham Singh (owner of the offending vehicle) in the office of New India Insurance Company. In this form, he has admitted that Smt. Bala Devi, Smt. Palo Devi and Baru Ram were gratuitous passengers in Swaraj Mazda Canter No. HR-56-3565. They were unauthorized passengers, who were travelling in the offending vehicle. It has been stated that the claim is not payable as per terms and conditions of the police. Thus, the Insurance Company has repudiated the claim sought by

Isham Singh. This document has remained un rebutted by the claimants.

9. Reference at this stage can be made to a judgment of Hon'ble the Supreme Court of India in a case of *M/s National Insurance Co. Ltd vs. Baljit Kaur and others, 2004 (1) R.C.R (Civil) 722* wherein the question for consideration was that whether an Insurance Policy in respect of goods of vehicle would also cover gratuitous passengers, in view of the legislative amendment in 1994 to Section 147 of the Motor Vehicles Act. The appeals were partly allowed and in para 20 and 21, it has been observed as under:-

20. *It is therefore, manifest that in spite of the amendment of 1994, the effect of the provision contained in [Section 147](#) with respect to persons other than the owner of the goods or his authorized representative remains the same. Although the owner of the goods or his authorized representative would now be covered by the policy of insurance in respect of a goods vehicle, it was not the intention of the legislature to provide for the liability of the insurer with respect to passengers, especially gratuitous passengers, who were neither contemplated at the time the contract of insurance was entered into, nor any premium was paid to the extent of the benefit of insurance to such category of people.*

21. *The upshot of the aforementioned discussions is that instead and in place of the insurer the owner of the vehicle shall be liable to satisfy the decree. The question, however, would be as to whether keeping in view the fact that the law was not clear so long such a direction would be fair and equitable. We do not think so. We, therefore, clarify the legal position which shall have prospective effect. The Tribunal as also the High Court had proceeded in terms of the decisions of this Court in **Satpal Singh (supra)**. The said decision has been overruled only in **Asha Rani (supra)**. We, therefore, are of the opinion that the interest of justice will be sub- served if the appellant herein is directed to satisfy the awarded amount in favour of the claimant if not already satisfied*

and recover the same from the owner of the vehicle. For the purpose of such recovery, it would not be necessary for the insurer to file a separate suit but it may initiate a proceeding before the executing court as if the dispute between the insurer and the owner was the subject matter of determination before the tribunal and the issue is decided against the owner and in favour of the insurer. We have issued the aforementioned directions having regard to the scope and purport of [Section 168](#) of the Motor Vehicles Act, 1988 in terms whereof it is not only entitled to determine the amount of claim as put forth by the claimant for recovery thereof from the insurer, owner or driver of the vehicle jointly or severally but also the dispute between the insurer on the one hand and the owner or driver of the vehicle involved in the accident inasmuch as can be resolved by the tribunal in such a proceeding.

10. In the present case, the compensation has to reassessed and the Insurance Company shall satisfy the award and recover the same from the owner of the offending vehicle.

<i>Sr. No.</i>	<i>Heads</i>	<i>Calculations</i>
(i)	Income	Rs.3300/- per month
(ii)	1/3 rd of (i) deducted as personal expenses of the deceased=	Rs.3300-Rs.1100=Rs.2200/- per month
(iii)	Compensation after multiplier of 14 is applied	Rs.2200X 12 X 14= Rs.03,69,600/-
(iv)	Conventional heads (Loss of estate, funeral expenses and transportation charges)	Rs.9500/-
(v)	Total Compensation awarded	Rs.3,79,100/-
	Enhanced amount of compensation	379100-50000=Rs.3,29,100/- (rounded off to Rs.3,29,000/-)

11. The enhanced amount of compensation of Rs.3,29,000/- shall be payable within a period of forty five days from the date of receipt of certified copy of this order. The appellants shall also get interest @ 9% from the date of filing of the claim petition, in view of judgment of Hon'ble the

Apex Court in **Civil Appeal No. 4528-2019 titled as Dara Singh @ Dhara**

Banjara vs. Shyam Singh Varma and ors, decided on 01.05.2019.

However, the Insurance Company is directed to satisfy the award and recover the same from the owner of the offending vehicle

12. Accordingly, the award stands modified to the above extent and the present appeal is partly allowed.

21.11.2019

G Arora

Whether speaking/reasoned
Whether reportable

(RITU BAHRI)

JUDGE

Yes
No