

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 2649 of 2013 (O&M)

Date of Decision: 15.05.2019

National Insurance Company Limited

.....Appellant

Versus

Ram Sewak Pandey and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Neeraj Khanna, Advocate
for the appellant.

Mr. Tanmoy Gupta, Advocate
for respondents No. 1 and 2.

AVNEESH JHINGAN, J.(oral)

The award dated 3.1.2013 passed by Motor Accident Claims Tribunal, Gurgaon (hereinafter referred to as 'the Tribunal'), has been assailed by the insurer of vehicle bearing registration No.DL-2CAL-6845 (for short 'the offending vehicle') being aggrieved of quantum of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act').

The facts in brief are that on 23.10.2010 deceased Hosila Pandey alongwith his nephew Deepak Pandey was coming from Ghata village to market. On the way, the offending vehicle came from front side and dashed into the deceased who was standing on the verge of the road. As a result of the impact, Hosila Pandey sustained injuries and succumbed to the injuries. FIR No. 117 dated 23.10.2010 was registered at Police Station Sector 56, Gurgaon. A claim petition under Section 166 of the Act was filed

by one brother aged 40 years and married sister aged 43 years. The Tribunal awarded a sum of Rs.4,07,500/- along with interest at the rate of 7.5% per annum and respondents were held jointly and severally liable to pay compensation.

Learned counsel for the appellant states that the claimants were not dependant upon the earning of the deceased. He argues that the brother and sister of deceased were residing at Bihar whereas deceased was residing at Gurgaon. He contends that nothing was produced on record to show that the deceased was contributing his earning for claimants, the Tribunal erred in awarding loss of dependency.

Learned counsel for the claimants defends the award and argues that claimants were the legal representatives and hence entitled to file claim petition. It is further submitted that even if loss of dependency is not proved yet the claimants are entitled to compensation under conventional heads.

There is no challenge by the claimants to the fact that they were not dependants upon the deceased.

The issue involved in the present appeal is "whether the claimants who were not dependant on deceased are entitled to compensation, if yes to what extent?"

Before dealing with the issue, Sections 166 and 168 of the Act is reproduced below:

“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) 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.

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168. Award of the Claims Tribunal.—On receipt of an application for compensation made under section 166, the Claims Tribunal shall, after giving notice of the application to the insurer and after giving the parties (including the insurer) an opportunity of being heard, hold an inquiry into the claim or, as the case may be, each of the claims and, subject to the provisions of section 162 may make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid and in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be: Provided that where such application makes a claim for compensation under section 140 in respect of the death or permanent disablement of any person, such claim and any other claim (whether made in such application or otherwise) for compensation in respect of such death or permanent disablement shall be disposed of in accordance with the provisions of Chapter X.

(2) The Claims Tribunal shall arrange to deliver copies of the award to the parties concerned expeditiously and in any case within a period of fifteen days from the date of the award.

(3) When an award is made under this section, the person who is required to pay any amount in terms of such award

shall, within thirty days of the date of announcing the award by the Claims Tribunal, deposit the entire amount awarded in such manner as the Claims Tribunal may direct.”

Section 166(1)(c) of the Act entitles the legal representatives to file the claim petition. There is no presumption attached that the legal representatives were dependent on the earning of the deceased.

The term 'legal representative' has not been defined under the Act. However, Section 2(11) of the Code of Civil Procedure, 1908 defines 'legal representative' to mean a person who in law represents the estate of the deceased. The definition is wide enough to include persons other than the husband, wife, parents and children also.

Under Section 168 of the Act, the Tribunal has to make an award, determine the amount of compensation which is just and proper and specify the persons to whom such compensation would be paid.

For awarding compensation under Section 166 of the Act there are two facets- firstly as to who can apply and secondly to quantify the compensation.

The Supreme Court in **Gujarat State Road Transport Corporation v. RamanbhaiPrabhatbhai and another**, AIR 1987 SC 1690 held as under:

“Before concluding we may add that although the Act was extensively modified after the receipt of the report of the Law Commission, Parliament did not choose to amend Section 110-A of the Act by defining the expression 'legal representatives' in relation to claims under Chapter VIII of the Act as 'the spouse, parent and children of the deceased' as

recommended by the Law Commission. The Law Commission had observed in its 85th report that it would be appropriate to assign to the expression 'legal representative' the same meaning as had been given to the expression 'representative' for the purposes of the Fatal Accidents Act, 1855 and that would effectively carry-out the purpose of social justice underlying Chapter VIII of the Act, to which the Fatal Accidents Act, 1855 was the nearest approximation. This recommendation was made after referring to the divergent views expressed by the various High Courts on the meaning of the expression 'legal representatives' in section 110-A of the Act. The fact that Parliament declined to take any action on the recommendation of the Law Commission of India suggests that Parliament intended that the expression 'legal representatives' in section 110-A of the Act should be given a wider meaning and it should not be confined to the spouse, parent and children of the deceased.”

As per Section 166 of the Act, legal representatives are entitled to claim compensation. The issue thereafter remains of quantifying the compensation.

Supreme Court in Smt. Sarla Verma and others v. Delhi Transport Corporation and another, AIR 2009 SC 3104 held as under:

9. Basically only three facts need to be established by the claimants for assessing compensation in the case of death :
 - (a) age of the deceased; (b) income of the deceased; and the
 - (c) the number of dependents. The issues to be determined by

the Tribunal to arrive at the loss of dependency are (i) additions/deductions to be made for arriving at the income; (ii) the deduction to be made towards the personal living expenses of the deceased; and (iii) the multiplier to be applied with reference of the age of the deceased. If these determinants are standardized, there will be uniformity and consistency in the decisions. There will lesser need for detailed evidence. It will also be easier for the insurance companies to settle accident claims without delay. To have uniformity and consistency, Tribunals should determine compensation in cases of death, by the following well settled steps:

Step 1 (Ascertaining the multiplicand)

The income of the deceased per annum should be determined. Out of the said income a deduction should be made in regard to the amount which the deceased would have spent on himself by way of personal and living expenses. The balance, which is considered to be the contribution to the dependant family, constitutes the multiplicand.

Step 2 (Ascertaining the multiplier)

Having regard to the age of the deceased and period of active career, the appropriate multiplier should be selected. This does not mean ascertaining the number of years he would have lived or worked but for the accident.

Having regard to several imponderables in life and

economic factors, a table of multipliers with reference to the age has been identified by this Court. The multiplier should be chosen from the said table with reference to the age of the deceased.

Step 3 (Actual calculation)

The annual contribution to the family (multiplicand) when multiplied by such multiplier gives the 'loss of dependency' to the family.

Thereafter, a conventional amount in the range of Rs. 5,000/- to Rs.10,000/- may be added as loss of estate. Where the deceased is survived by his widow, another conventional amount in the range of 5,000/- to 10,000/- should be added under the head of loss of consortium. But no amount is to be awarded under the head of pain, suffering or hardship caused to the legal heirs of the deceased.

The funeral expenses, cost of transportation of the body (if incurred) and cost of any medical treatment of the deceased before death (if incurred) should also added.

“15. 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 dependent. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependents, because they will either be independent and earning, or married, or be dependant on the father. Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where family of the bachelor is large and dependant on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third.” *[Emphasis supplied]*

It clearly emerges that in the cases where the dependency is not proved, the stages provided by Supreme Court will not apply. It was further held that in the absence of evidence to contrary father, brothers and sisters of the deceased will not be considered as dependent.

In other words, failure to prove loss of dependency would mean that the deceased was not contributing part of earning to the claimants.

The Supreme Court in Smt. Manjuri Bera v. The Oriental Insurance Company Ltd. and another, AIR 2007 SC 1474 held as under:

"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.

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19. In the impugned judgment the High Court has correctly drawn a distinction between "right to apply for compensation" and "entitlement to compensation". The High Court has rightly held that even a married daughter is a legal representative and she is certainly entitled to claim compensation. It was further held, on the facts of the present case, that the married daughter was not dependent on her father. She was living with her husband in her husband's house. Therefore, she was not entitled to claim statutory compensation. According to the High Court, the claimant was not dependent on her father's income. Hence, she was not entitled to claim compensation based on "No Fault Liability".

20. In my opinion, "No Fault Liability", envisaged in Section 140 of the said Act, is distinguishable from the rule of "Strict Liability". In the former, the compensation amount is fixed. It

is Rs. 50,000/- in cases of death [Section 140(2)]. It is a statutory liability. It is an amount which can be deducted from the final amount awarded by the Tribunal. Since, the amount is a fixed amount/crystallized amount, the same has to be considered as part of the estate of the deceased. In the present case, the deceased was an earning member. The statutory compensation could constitute part of his estate. His legal representative, namely, his daughter has inherited his estate. She was entitled to inherit his estate. In the circumstances, she was entitled to receive compensation under "No fault Liability" in terms of Section 140 of the said Act. My opinion is confined only to the "No Fault Liability" under Section 140 of the said Act. That section is a Code by itself within the Motor Vehicles Act, 1988."

It was held that there is a distinction between 'right to apply for compensation' and 'entitlement to compensation'. It is only after proving the entitlement to the compensation that loss of dependency can be asked for. In cases where there was no dependency the claimants were held entitled to compensation not less than the amount to be paid under Section 140 of the Act.

The Supreme Court in Mrs. Hafizun Begum v. Md. Ikram Heque and others, 2007 (3) R.C.R. (Civil) 691 held that the claimants shall be entitled to amount under Section 140 of the Act even in absence of dependency. The relevant para of the said judgment is reproduced below:

“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 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.”

The compensation awarded by the Tribunal for loss of dependency cannot be sustained. However, a sum of ₹50,000/- is awarded to the claimants in view of the decisions cited above.

Disposed of accordingly.

15.05.2019
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(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable:	Yes