IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-3423-2013(O&M)
Date of decision:-6.9.2019

Smt.Birmati and another

...Appellants

Versus

Ajmer Singh and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Yashjot S.Dhaliwal, Advocate for
Mr.K.S. Dhaliwal, Advocate
for the appellants.

Ms.Monika Singh, Advocate for
Mr.Amit Kumar Jain, Advocate
for respondents No.1 and 2.

Mr.Suvir Dewan, Advocate
for respondent No.3.

****

H.S. MADAAN, J.

On account of death of Smt.Usha aged about 40 years in a road side accident, which took place on 21.3.2012 at about 10:15 a.m. in the area of Naguran-Jind road, statedly on account of rash and negligent driving of Cruiser vehicle bearing registration No.HR-56-7326 (hereinafter referred to as the offending vehicle) by respondent No.1 – Ajmer Singh, her mother-in-law – Smt.Birmati and married daughter – Kiran Devi had brought a claim petition under Section 166 of the Motor Vehicles Act against respondents i.e. Ajmer Singh – driver, Rajesh – owner and United India Insurance Co. Ltd. Jind - insurer of that offending vehicle, claiming compensation to the tune of Rs.25 lakhs.

On notice, all the three respondents had appeared and contested the claim petition. Issues on merits were framed. Parties were afforded adequate opportunities to lead evidence.

On completion of trial, the Motor Accidents Claims Tribunal, Jind (hereinafter referred to as the Tribunal) accepted the claim petition as regards claimant No.2 – Kiran Devi only and compensation of Rs.50,000/- along with costs and interest @ 9% per annum from the date of institution of the petition till final realization was allowed, payable by all the respondents jointly and severally, whereas the claim petition on behalf of claimant No.1 – Smt.Birmati, mother-in-law of the deceased was dismissed.

Feeling aggrieved, both the claimants have approached this Court by way of of filing the present appeal, notice of which was issued to the respondents, who have put in appearance through counsel.

I have heard learned counsel for the parties besides going through the record.

The Tribunal on analysis of the evidence produced before it has returned a finding that respondent No.1 – Ajmer Singh was author of the accident by rash and negligent driving of the offending vehicle resulting in death of Smt.Usha. Ajmer Singh being driver, Rajesh owner and United India Insurance Co. Ltd. insurer of the offending vehicle were held to be jointly and severally liable to pay the compensation. The Tribunal had not observed any violation of terms and conditions of the insurance policy, which might have absolved the insurance company of its liability to pay compensation. The plea raised on behalf of the insurance company that since owner of the offending vehicle respondent No.2 had not got transferred the insurance policy Ex.R1 in his favour after its purchase from the previous owner, therefore he had no insurable interest therein being stranger to the insurance contract and as such the insurance company was liable to be exonerated, was rejected observing that whenever a vehicle covered by the insurance policy is transferred, the liability of insurer does not cease so far as the third party is concerned, even if the owner or purchaser does not give any intimation to it in view of statutory provision under Section 157 of the Act. Judgements in that respect i.e. ***Rikhi Ram Versus Sukhrania 2003 ACJ 534(SC)*** and ***United India Insurance Vs. Rajvinder Kaur and others 2011 ACJ 2472(P&H)*** have been referred to.

The Tribunal has also observed that respondent No.1 was holding a valid and effective driving licence at the relevant time.

However, claim of the claimant No.1 – Smt.Birmati – mother-in-law of the deceased was rejected for the reason that there was no evidence to show that she was dependent upon the deceased, whereas married daughter of deceased Smt.Kiran Devi was granted Rs.50,000/- only under no fault liability in terms of Section 140 of the Motor Vehicles Act. The entire approach of the Tribunal to say the least has been erroneous.

As per specific case of the claimants, husband of the deceased had expired and she was to look after her mother-in-law – claimant No.1 in her old age and Kiran Devi – claimant No.2 – daughter of the deceased had been married off at quite a young age of 19 years. She having lost her father, the deceased was discharging all her obligations towards her and after her death, no one remained in her parental home to fulfill social obligations towards her. Both the claimants have contended that by untimely death of the deceased, they have been deprived of her love and affection also. Merely because Smt.Birmati has other sons does not mean that she could not be taken to be a dependent upon the deceased during her old age. As per general custom and practice, a mother-in-law prefers to reside with her widowed daughter-in-law for various social and economic reasons. The case set up by the claimants in that regard should be considered sympathetically rather than taking a hyper-technical view in the matter.

The counsel for the claimants had referred to judgment ***New India Assurance Co. Ltd. Versus Ramya Raghavan and another 2006 ACJ 2347 (Kar.)*** before the Tribunal wherein it was observed that proof of actual dependency is not necessary and the married sons/daughters are entitled to compensation for death of their mother/father. However, this authority was wrongly not taken into consideration by the Tribunal.

Learned counsel for the appellants has referred to Apex Court authority ***Smt.Manjuri Bera Versus The Oriental Insurance Company Ltd. and Anr., 2007() RCR(Civil) 674*** wherein while dealing with a case where a person, who had died in a road side accident had not left any legal heir except married daughter, such married daughter was found entitled to compensation though she was not dependent on her father. It was observed that a legal representative is entitled to compensation even if he was not dependent on deceased and there was no loss of dependency. The Tribunal has though referred to this authority but has clearly misinterpreted the same.

Learned counsel for the appellants has placed reliance upon judgment ***New India Assurance Co. Ltd. Versus Ashwin Vrajlal Rajgor and Others, 2005 ACJ 1618*** by a Division bench of Gujarat High Court which was a case of death of a person in a road side accident, who was a bachelor and had not left any Class I heir or legal representative, then brother's son and brother's wife were held to be legal representatives of the deceased entitled to compensation in the absence of any Class I heir.

Learned counsel for the appellants has further referred to judgment passed by a Co-ordinate Bench of this Court in FAO-5452 of 2012 titled ***The New India Assurance Company Ltd. Versus Kuldeep Singh and others***, decided on 2.8.2013 wherein it was observed that even if a son is major and is earning, he does not stop looking to his father for financial help. It is not a case where the sons were drawing big salary and that they could not look to their father, who was getting petty amount. Sons even if they are major do not lose the status of legal representatives about which there is reference in Section 166(1)(c) of the Act. Therefore, the major sons can maintain a claim petition for compensation on the death of their father.

Therefore, I find that a widowed mother-in-law does look forward to his daughter-in-law for financial support in old age irrespective of her having other sons. Similarly a married girl having lost her father looks towards her mother for discharging social obligations towards her in the form of giving gifts in cash and kind on various occasions.

Under the circumstances, the finding given by the Tribunal that claimant Smt.Birmati is not entitled to get compensation cannot be sustained and is set aside and further the finding given by the Tribunal that claimant Kiran Devi is entitled to get compensation under Section 140 of the Motor Vehicles Act to the tune of Rs.50,000/- only is also not sustainable and the same is also set aside.

Now coming to the quantum of compensation. The Tribunal had taken the age of deceased to be 40 years. As per version of the claimants, she was a household woman besides an agriculturist, as such her deemed income should be taken to be Rs.9,000/- per month. The claimants have not led any evidence to show that the deceased was engaged in the avocation of agriculture or that she was having any agricultural income in her name or for that matter, she was cultivating any piece of land. Therefore the efforts put in by her in doing household work are to be taken into consideration. No doubt, a woman does contribute to the family by doing household chores including cooking, cleaning utensils, washing clothes and managing the household affairs and it is difficult to quantify such services rendered by a household lady to the family, however, a reasonable amount is to be taken in that regard. In ***Lata Wadhwa and others Vs. State of Bihar and others, 2001(4) RCR(Civil) 673***, the Apex Court had evaluated the contribution of a household wife at Rs.3,000/- per month. It was an accident, which took place in 1989. In a judgement passed by a Co-ordinate Bench titled ***Cholamandalam MS General Insurance Co. Ltd. Versus Lakhmi Chand***

and Ors., 2015(4) PLR 405, the notional income for a housewife was taken to be Rs.5,000/- and no addition was made towards future prospects. In another FAO-1274 of 2014 having title ***Manphool & others Versus Anil and others*** decided on 14.3.2018 by a Co-ordinate Bench of the Court, the notional income of a housewife was assessed to be Rs.5,200/- per month. In FAO-5627 of 2014 having title ***Brahmanand and others Versus Rajesh Kumar and others*** decided on 7.12.2016 by a Co-ordinate Bench of the Court, the notional income of a housewife was assessed to be Rs.6,000/- per month.

Keeping in view the facts and circumstances of the case, the age of the deceased, the economic background of the parties, I find that it would be proper and appropriate if the notional income of the deceased Smt.Usha is taken to be Rs.6,000/- per month.

In that way, the annual contribution comes out to Rs.72,000/- (6,000 x 12). Keeping in view the age of the deceased, the multiplier of 15 should be applied. The compensation comes out to Rs.10,80,000/(72,000 x 15).

The claimants are entitled to get Rs.15,000/- under the head funeral expenditure and Rs.15,000/- towards loss of estate.

Thus the total compensation comes out to be Rs.11,10,000/- (10,80,000 + 30,000).

The Tribunal has wrongly awarded compensation of Rs.50,000/- to claimant No.2 along with interest as mentioned in the relief clause payable by all the respondents jointly and severally.

Therefore, the appeal filed by the claimants stands allowed with costs and both the claimants are entitled to Rs.11,10,000/- as compensation and further they would be entitled to get interest @ 7.5% per annum from the date of filing of the claim petition till actual realization of the amount of Rs.11,10,000/-.

Of the compensation awarded, the liability shall be joint and several of all the respondents. The amount shall be apportioned as follows:

1. Petitioner No.1 – Birmati - Rs.2,10,000/-
2. Petitioner No.2 – Kiran Devi - Rs.9,00,000/-

6.9.2019 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No