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

1. **FAO No. 6436 of 2013 (O&M)**
Date of decision : September 10, 2019

Sanjit Thakur .....Appellant

Versus

Vikash and others ....Respondents

2. **FAO No. 4900 of 2013 (O&M)**

Sanjit Thakur .....Appellant

Versus

Vikash and others ....Respondents

**CORAM:- HON'BLE MRS. JUSTICE LISA GILL**

Present: Mr. Atul Yadav, Advocate
for the appellant.

Mr. A.S. Sidhu, Advocate
for respondent No. 3.

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**LISA GILL, J.**

This judgment shall dispose of FAO Nos. 6436 and 4900 of 2013. Both the appeals emanate from claim petitions arising out of a motor vehicle accident which took place on 25.03.2011. The claim petitions have been decided by the learned Motor Accident Claims Tribunal, Gurgaon (hereinafter referred to 'the Tribunal') vide a common award dated 12.04.2013.

Present appeals have been filed by the claimants for enhancement of compensation awarded by the learned Tribunal on account of death of Jhalki Devi and Nidhi, respectively vide award dated 12.04.2013.

Brief facts necessary for adjudication of the case are that the appellant/claimant filed two separate claim petitions under Section 166 of the Motor Vehicles Act seeking compensation on account of death of Jhalki Devi and Nidhi, in a motor vehicle accident which took place on 25.03.2011, caused due to rash and negligent driving of the offending vehicle, i.e. Motorcycle bearing registration No. DL-9SY-8452, by respondent No.1.

Learned Tribunal on considering the evidence on record, facts and circumstances concluded that Jhalki Devi and Nidhi died in the accident which took place on 25.03.2011 due to rash and negligent driving of the offending Motorcycle bearing registration No. DL-9SY-8452 by respondent No. 1.

In MACT No. 138-A, subject matter of FAO No. 4900 of 2013, learned Tribunal while assessing the notional income of the deceased Nidhi, a minor child aged three and a half years, to be ₹15,000/- per month and applying a multiplier of 15, awarded a sum of ₹2,43,000/- with interest at the rate of 9% per annum from the date of filing of the claim petition till date of actual realisation of the award. A sum of ₹17,600/- was awarded on account of medical expenses.

In MACT No. 138-B, subject matter of FAO No. 6436 of 2013, learned Tribunal in relation to the death of Jhalki Devi, aged 65 years, awarded a sum of ₹97,528/- with interest at the rate of 9% per annum from the date of filing of the claim petition till date of actual realisation of the award. A sum of ₹50,000/- was awarded on account of loss of estate. Additionally, a sum of ₹20,000/- was awarded on account of loss of love and affection besides a sum of ₹5,000/- on account of funeral expenses. A sum of ₹22,528/- was awarded on account of medical treatment.

Aggrieved of the quantum of compensation, claimants have filed these appeals.

Learned counsel for the appellant submits that compensation awarded on account of death of child aged three and a half years (3½) years should be enhanced. He relies upon the judgments of this Court in FAO No. 5190 of 2014 and FAO No. 2834 of 2016. In respect to the deceased Jhalki Devi i.e. the mother of the claimant, it is submitted, she was sixty five (65) years old at the time of the accident and she was helping the claimant (her son) in running his *pan* and *biddi* shop. She was also contributing towards the household chores and looking after the minor children of the claimant as well. The claimant, it is submitted, had three children and the deceased was making a valuable contribution in terms of her services to the family as well. Therefore, her income should be assessed accordingly and compensation enhanced. It is, thus, prayed that compensation awarded to the claimants be reworked and enhanced accordingly.

Learned counsel for the insurance company per contra submits that the claimant was not dependent upon the deceased Jhalki Devi, his mother therefore, though entitled to file a claim petition as a legal heir of the deceased, he is not entitled to any enhancement of the compensation on account of loss of dependancy or any other count. Learned counsel relies upon the judgments of this Court in FAO 530 of 2015 and 7597 of 2017. It is submitted that the compensation has been rightly assessed, thus, impugned award dated 12.04.2013 be upheld.

I have heard learned counsel for the appellant as well as learned counsel for the insurance company and have gone through the record with their able assistance.

**FAO No. 4900 of 2013**

In my considered opinion, compensation afforded to the appellant – claimant deserves to be enhanced. In respect to the compensation awarded on account of death of the minor, it is to be noticed that in FAO No. 2834 of 2016 decided on 18.05.2018, notional income of a child about four/five years old, has been assessed as ₹50,000/- per annum. Reference has been made to the judgments of this Court in **Nachhattar Singh and another versus Jagga Singh and others, 2016 (2) PLR 718**, **Beet Nath and another vs. Gulab Singh and others** (FAO No. 159 of 2015) decided on 10.07.2017, as well as judgment of the Hon'ble Supreme Court in **Kishan Gopal and another vs. Lala and others 2013 (4) RCR (Civil) 276**. A co-ordinate Bench of this Court in FAO No. 5190 of 2014 decided on 26.08.2019 (**Seema and another vs. Bhim Singh and another)** has observed that the State Government itself regularly enhances minimum wages at regular intervals, dearness allowance of the employees is also enhanced, therefore, there is no impediment in enhancing the notional income on the same principal. Reference was made to the judgments of the Hon'ble Supreme Court in **Kishan Gopal** (supra) and **Puttamma and others vs. K.L. Narayana Reddy and another, 2014 (1) RCR (Civil) 443** and notional income of the deceased – minor child was assessed as ₹50,000/- per annum. Therefore, keeping in view the facts and circumstances of the present case, it is considered just and expedient to assess the notional income of the minor child Nidhi, as ₹50,000/- per annum. In terms of judgment of the Hon'ble Supreme Court in ***Smt. Sarla Verma and others Versus Delhi Transport Corporation and another*** 2009 (3) RCR (Civil) 77, multiplier of 15 is applied, which takes the compensation to ₹7,50,000/-. A sum of ₹15,000/- is awarded under the conventional heads. A sum of ₹17,600/- awarded by the learned Tribunal on account of medical expenses is maintained. Thus, appellant is entitled to a sum of ₹7,82,600/-.

The amount of compensation already awarded to the appellant, needless to say, shall stand deducted from the amount calculated as above. Appellant is entitled to interest at the rate of 7.5% per annum on the enhanced amount from the date of filing of the petition till realization.

**FAO No. 6436 of 2013**

I do not find any merit in the argument raised by learned counsel for the insurance company that the claimant is not entitled to any compensation as he was not dependent upon the deceased. At this juncture, it is relevant to refer to Section 166 of the Act which reads as under:-

> "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—
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> (a) by the person who has sustained the injury; or
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> (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 inured 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."

The term 'legal heirs' is not defined in the Act. The Hon'ble Supreme Court in **Montford Brothers of St. Gabriel and another versus United India Insurance and another Etc. 2014 (3) SCC 398**, rejected the plea that the right of filing a claim should be controlled by the provisions of Fatal Accident Act. The term legal representative was stated to have the same meaning as assigned to it in clause (11) of Section 2 of CPC, which reads as under :-

> " Section 2(11)`Legal representative' means 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".

It is further observed that unless and until there is evidence in support of such pleading that the claimant is not a legal representative, the claim petition cannot dismissed as not maintainable. In the case of **Mortford Brothers** (supra), the Hon'ble Supreme Court held that the term legal representatives included the charitable society registered under the Societies Registration Act, 1960 to be the LR of the deceased therein who had renounced the world and had joined the said society. The Hon'ble Supreme Court in **Smt. Manjuri Bera versus The Oriental Insurance Company Ltd. And another 3007 (10) SCC 643** has observed that a legal representative is the one who suffers on account of death of a person due to a motor vehicle accident and need not necessarily be a wife, husband, parent and child. It is observed that even when there is no loss of dependancy, the claimant, if the legal representative, will be entitled to compensation. The statutory compensation to be received under the Act, it is observed could constitute part of the estate of the deceased. In a judgment of this Court in

**Smt. Gurdev Kaur and others versus Jharmal Singh and another 2017 (3) PLR 8**, it is held that major sons and daughters are entitled to maintain the claim petition on death of their father. In case of **Miss Nandini Minor and others versus Amrik Singh and others 2011 (52) RCR (Civil) 882**, it is held that:-

> " While loss to estate may itself be merely a token or conventional figure when the compensation is determined taking the dependence factor, it assumes significance in a case where no dependancy is established. The legal heirs come by the benefit of accretions to the estate if he/she lived."

Major sons and grandchild were held entitled to compensation in **Nandin**i's case (supra).

The claimant, in the instant case, has been accepted to be the legal representatives of the deceased – Jhalki Devi. Keeping in view the facts and circumstances of the case, it is held that the claimant is not only entitled to file the claim petition but is also entitled to compensation on account of death of Jhalki Devi, which occurred due to the injuries received by her in a motor vehicle accident which took place on 25.03.2011.

Deceased Jhalki Devi was about 65 years old at the time of the accident. The claimant (PW3) has specifically deposed that he alongwith his mother and other family members all used to live together. It is claimed that the deceased used to look after the work at the *pan* and *biddi* shop and she was, thus, earning ₹5,000/- per month, but this claim is totally unsubstantiated by any evidence on record. However, it cannot be ignored that the deceased though 65 years old was able bodied and keeping good health. Needless to say she would necessarily have been contributing to the household work as she was living together with her son and his family. It is relevant to note that even at the time of the accident, she had come to deliver lunch to her son and was accompanied by her minor grand daughter. The deceased was clearly contributing towards the household chores. Even though not having the entire responsibility of the household as would be in the case of house wife, the deceased was necessarily contributing to the household work, which is apparent from the perusal of the record. There is no evidence on record to indicate that she was ailing and unfit. This Court in **Ved Parkash and others versus Ram Sarup and others, FAO No. 3395 of 2015**, decided on 08.08.2018 has assessed notional income of a house wife aged 48 years to be ₹ 7000/- per month in respect to the accident which took place in the year 2011. Keeping in view the peculiar circumstances of the case, it is considered just and expedient to assess income of the deceased to be ₹4000/- per month. In view of the guidelines laid down by the Hon'ble Supreme Court in case of ***Smt. Sarla Verma and others Versus Delhi Transport Corporation and another*** 2009 (3) RCR (Civil) 77, deduction of 1/3rd is to be applied, thereby rendering income of the deceased to be ₹2667/-(4000-1333). Applying a multiplier of 07, dependancy of the claimants is assessed as ₹2,24,028/- (₹2667x12x7). The claimant is also entitled to ₹15,000/- each for funeral expenses (instead of ₹5000) and loss of estate (instead of ₹50,000). In terms of the judgment of the Hon'ble Supreme Court in **Magma General Insurance Company Limited versus Nanu Ram Alias Chuhru Ram and other 2018 (4) RCR (Civil) 333** and decision dated 14.03.2019 of this Court in **FAO No. 2110 of 2016** titled **Shri Ram General Insurance Company Limited versus Beant Kaur and others,** appellant i.e. son of the deceased is entitled to ₹40,000/- on account of loss of parental consortium. A sum of ₹22,528/- awarded by the learned Tribunal on account of medical expenses is maintained. Claimant is, thus, entitled to total compensation of ₹3,16,556/- detailed as under:-

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|---|---|
| Loss of dependency (₹2667x12x7) | ₹2,24,028/- |
| Loss of parental consortium | ₹40,000/- |
| Loss of estate | ₹15,000/- |
| Funeral expenses | ₹15,000/- |
| Medical expenses | ₹22,528/- |
| **Total** | ₹3,16,556/- |

The amount of compensation already awarded to the appellants, needless to say, shall stand deducted from the amount calculated as above. Appellant is entitled to interest at the rate of 7.5% per annum on the enhanced amount from the date of filing of the petition till realization.

With the abovesaid modification in the amount of compensation, FAO Nos. 6436 and 4900 of 2013 are disposed of.

**(Lisa Gill)**
**Judge**

September 10, 2019
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No