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

F.A.O No. 4018 of 2016
Date of decision:- 19.12.2019

Parveen ...Appellant

Versus

Bablu and ors. ...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Ms. Navdeep Kaur, Advocate for
Mr. Keshav Pratap Singh, Advocate
for the appellant

Mr. Vinod Gupta, Advocate for the respondent/Insurance Co.

RITU BAHRI J. (Oral)

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, Sonepat (for short, 'the Tribunal') to the tune of Rs.50,000/- vide impugned award dated 10.02.2016 on account of death of his brother Parvinder.

2. As per claimants, on 04.12.2014, Dalbir was driving the motorcycle bearing No. HR10V-4247 and Parvinder and Jasbir were sitting behind him and Parveen son of Balraj was also coming behind them in his auto rickshaw. When they were coming down of the over bridge towards old DC Road, then a truck bearing No. HR58-A-4002 came from behind and struck against the motorcycle of Dalbir. The truck dragged all of them along with motorcycle and again struck the motorcycle bearing No. HR10-K-9954 of the Bajaj Platina Make. The injured were taken to General hospital, Sonepat. Parvinder, Dalbir and Jasbir expired on the spot due to the injuries

sustained by them in the accident.

3. While assessing compensation, the Tribunal observed that since the brother had filed the claim petition, he is only entitled to compensation of Rs.50,000/- under the head loss of estate.

4. The learned counsel for the claimants-appellants contends that the compensation awarded by the learned Tribunal is on the lower side and deserves to the enhanced, as no future prospects have been awarded. The compensation should have been awarded to the claimants by applying the multiplier method.

5. On the other hand, learned counsel for the Insurance Company has opposed the prayer made by the learned counsel for the appellant,.

6. I have heard learned counsel for the parties and perused the record.

7. 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 by examining P.W.1 Parveen (eye witness of the occurrence) and producing on record copy of F.I.R (Ex P1), copy of charge sheet dated 26.02.2015 (Ex P.W.2/B) and copy of report under Section 173 Cr.P.C (Ex P.W.2/C).

8. With regard to the fact that the appellant and proforma respondent Nos. 4 and 5 are entitled for compensation, 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, 2014 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:-*
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> > *"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 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.

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 Rs.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."

9. Further the brother and sisters are also entitled for compensation of Rs.40,000/- each under the head of loss of consortium, in view of judgment of Hon'ble the Supreme Court of India in a case of ***Magma General Insurance Co. Ltd vs Nanu Ram Alias Chuhru Ram,***

2018 (4) RCR Civil 837 .

10. Reference at this stage can be made to a recent judgment of Hon'ble the Supreme Court of India in a case of ***National Insurance Company Ltd vs. Pranay Sethi and others, passed in Spl Leave Petition (Civil) No. 25590 of 2014, decided on October 31, 2017*** *wherein the* issue with regard to awarding of amount under the conventional heads has been authoritatively decided, while observing as under :-

> *"54. As far as the conventional heads are concerned, we find it difficult to agree with the view expressed in Rajesh. It has granted Rs. 25,000/- towards funeral expenses, Rs. 1,00,000/-loss of consortium and Rs. 1,00,000/- towards loss of care and guidance for minor children. The head relating to loss of care and minor children does not exist. Though Rajesh refers to Santosh Devi, it does not seem to follow the same. The conventional and traditional heads, needless to say, cannot be determined on percentage basis because that would not be an acceptable criterion. Unlike determination of income, the said heads have to be quantified. Any quantification must have a reasonable foundation. There can be no dispute over the fact that price index, fall in bank interest, escalation of rates in many a field have to be noticed. The court cannot remain oblivious to the same. There has been a thumb rule in this aspect. Otherwise, there will be extreme difficulty in determination of the same and unless the thumb rule is applied, there will be immense variation lacking any kind of consistency as a consequence of which, the orders passed by the tribunals and*

courts are likely to be unguided. Therefore, we think it seemly to fix reasonable sums. It seems to us that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The principle of revisiting the said heads is an acceptable principle. But the revisit should not be fact-centric or quantum-centric. We think that it would be condign that the amount that we have quantified should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years. We are disposed to hold so because that will bring in consistency in respect of those heads.".

11. In the present case, the deceased was 10+ 2 pass and was giving tuition. The compensation is being reassessed by taking the monthly income of the deceased at Rs.6000/- per month to be that of skilled labouer.

Sr. No.	***Heads***	***Calculations***
(i)	Income	Rs.6000/- per month
(ii)	40% of (i) above to be added as future prospects=	Rs.6000+Rs.2400=Rs.8400/- per month
(iii)	1/2 of (ii) deducted as personal expenses of the deceased=	Rs.8400-Rs.4200=Rs.4200/- per month
(iv)	Compensation after multiplier of 18 is applied	Rs.4200 X 12 X 18= Rs.09,07,200/-
(v)	Conventional heads (Loss of estate and funeral expenses)	Rs.30,000/-
(vi)	Loss of consortium (brothers and sisters)	Rs.1,20,000/- (Rs.40,000/- each)
(viii)	Total Compensation awarded	Rs.10,57,200/-
	Enhanced amount of compensation	**10,57,200-50,000=Rs.10,07,200/-** **(rounded off to Rs.10,07,000/-)**

12. The enhanced amount of compensation of Rs.10,07,000/- shall

be payable within a period of forty five days from the date of receipt of certified copy of this order. The appellant shall also get interest @ 9% per annum 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***. The remaining conditions of disbursal of amount and recovery rights shall remain unaltered.

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

19.12.2019 **(RITU BAHRI)**
G Arora ***JUDGE***

Whether speaking/reasoned ***Yes***
Whether reportable ***No***