

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

FAO No. 2430 of 2017 (O&M)

Date of decision : August 06, 2019

Keshav Moudgil through LRs

.....Appellant

Versus

Rajbir Singh and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. M.L. Saini, Advocate
for the appellant.

Mr. Bhag Singh, Advocate
for respondent No. 1.

Mr. Rajbir Singh, AAG, Haryana
for respondent No.2.

Ms. Vandana Malhotra, Advocate and
Ms. Monika Jangra, Advocate
for respondent No. 3.

LISA GILL, J.

This appeal has been filed by the claimants challenging the dismissal of the claim petition filed by them under Section 166 of the Motor Vehicles Act (for short – 'the Act') vide award dated 01.12.2016 passed by the learned Motor Accident Claims Tribunal, Chandigarh (hereinafter referred to as 'Tribunal').

Brief facts necessary for adjudication of the case are that initially claim petition under Section 166 of the Act was filed by Keshav Moudgil seeking compensation on account of the injuries suffered by him in a motor vehicle accident, which took place on 07.04.2014, and led to 100% disability. Keshav Moudgil, however, died on account of the injuries on 01.10.2015 and the claim petition was accordingly amended after due

permission of the learned Tribunal and the present appellants i.e. unmarried sisters of the deceased were impleaded as legal heirs of the deceased - Keshav Moudgil.

It is pleaded that Keshav Moudgil was proceeding from his office at Industrial Area to Manimajra for official work on 07.04.2014 on his LML Vespa Scooter bearing registration No. CH-03-E-8643. When he reached near light point of the Manimajra chowk, the offending bus driven by respondent No. 1 in a rash and negligent manner struck against the scooter due to which Keshav Moudgil fell on the road and received multiple injuries. He was rushed to GMCH, Sector 32 by the police officials. Surgery was conducted by the doctors at GMCH, Sector 32, Chandigarh. Due to head injury, Keshav Moudgil remained admitted in the said hospital from 07.04.2014 till 27.06.2014. He remained in coma even after his discharge and ultimately died on 01.10.2015 due to injuries suffered in the said accident. FIR No. 100 dated 07.04.2014 under Sections 279, 337 IPC was registered at Police Station, Sector 31, Chandigarh. The claimants stated that they are dependent upon the deceased, who was the only earning number of their family.

Claim petition was resisted by the respondents. Separate written statements were filed by all the three respondents. Respondent – driver stated that he was not at fault and a false case had been registered against him. Respondent No. 2 claimed that the FIR has been lodged against the driver of the bus in connivance with the claimants. The vehicle was stated to be insured with respondent No. 3.

Insurance company raised a preliminary objection that there is no evidence to prove that Keshav Moudgil died due to alleged injuries

suffered by him in the accident, which is also otherwise denied. The offending vehicle was claimed to be driven in violation of the terms and conditions of the insurance policy and that no intimation was given to the said respondent regarding the accident in question. Dismissal of the claim petition was sought.

Following issues were framed on the basis of the pleadings by the learned Tribunal:-

1. Whether on 07.04.2014, respondent No. 1 caused the death of Keshav Moudgil by rashly and negligently driving the offending vehicle bearing registration No. HR-37-C-6872?OPP
2. Whether the petitioners are entitled to compensation, if yes, how much and from whom? OPP
3. Whether respondent No. 1 was not holding a legal and valid licence at the time of accident? OPR
4. Relief.

Learned Tribunal concluded that Keshav Moudgil had indeed suffered injuries in a motor vehicle accident which took place on 07.04.2014 and observed as under:-

“ In view of the above discussed oral as well as documentary evidence on the record coupled with the legal position detailed above, it is held that the claimants have successfully proved that Keshav Moudgil suffered injuries in a motor vehicle accident which took place because of rash and negligent driving of respondent No. 1 being driver of offending vehicle bearing Registration No. HR-37-C-6872. Issue No. 1 is accordingly returned in favour of the claimants and against the respondents.”

However, learned Tribunal proceeded to opine that the evidence on record did not lead to the conclusion that it was the injuries sustained by him in the accident in question, which resulted in his death.

The cause of death, it is stated, is not on record. Therefore, no ground was made out for awarding compensation to the claimants on account of the death of Keshav Moudgil. At best the injured, if alive would have been entitled to compensation for the injuries received by him. It is further observed that both the claimants i.e. the sisters of the deceased were aged nearly 60 years. They failed to prove that they were dependant upon the deceased and, thus, entitled to any compensation. Accordingly, the claim petition was dismissed. Aggrieved therefrom, present appeal has been filed.

Learned counsel for the appellants vehemently argues that the evidence on record clearly proves that Keshav Moudgil suffered serious injuries in the motor vehicle accident, which took place on 07.04.2014 due to rash and negligent driving of the bus by its driver. Keshav Moudgil was visited by serious consequences leading to 100% permanent disability. He remained in coma till his death. Evidence on record, it is submitted, has been misread and the relevant evidence on record has been ignored by the learned Tribunal. The claim petition was wrongly dismissed. It is, thus, prayed that this appeal be allowed. Consequently, the claim petition be allowed as prayed for and just compensation be granted to the claimants.

Per contra, learned counsel for the respondents submit that the learned Tribunal has rendered a well reasoned and logical judgment dated 01.12.2016 on the basis of the evidence on record and the same be upheld.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

Learned Tribunal on the basis of the evidence on record has concluded that Keshav Moudgil did indeed receive injuries in a motor vehicle accident, which took place on 07.04.2014 due to rash and negligent driving by its driver. It is borne out from the record that Keshav Moudgil

was taken to the hospital by Constable Darbara Singh, who was on duty at the relevant time and was present at the spot. Constable Darbara Singh has testified before the learned Tribunal as PW2 and narrated the sequence of events as they unfolded. Receipt of serious injuries including a head injury in the accident in question in fact is not in dispute. The question for consideration is, whether, the deceased received such serious injuries in the said accident, which are the causative factor of his death. In this regard, it is relevant to refer to the testimony of Dr. Arvind Malhotra, Associate Professor, Department of Neuro Surgery, GMCH, Sector 32, Chandigarh who has deposed as PW4. PW4 has proved the discharge summary of Keshav Moudgil (Ex.P5) as well as disability certificate (Ex.P2). PW4 was first examined on 05.07.2016, however the treatment record was not available with him and he was again examined on 23.08.2016. PW4 proved the treatment record of Keshav Moudgil. He stated that he treated the patient alongwith his team. He further stated that possibility of death could be due to complications on account of head injury. In the cross examination, PW4 stated that,

“ The patient was discharged in stable condition but it does not mean that he was in fully conscious condition. At the time of discharge, the patient was in comma in layman language. As per GCS (Glass Go Comma Scale) 15 is normal whereas the score of patient was 6”.

Response of PW4 in his cross examination, that it is difficult to tell the cause of death without post mortem cannot be taken to mean that the injuries suffered by the deceased were not the causative factor of the death or that he was not in comma at the time of his death. At this stage, it is pertinent to note that in the initial petition under Section 166 of the Act seeking compensation for injuries suffered by Keshav Moudgil, it is clearly

and specifically mentioned that the claimant was still in a comma and not in a position to talk or understand anything and was confined to bed in an unconscious condition. His condition is stated to be critical. The discharge summary is on record as Ex. P5. It reveals the details regarding the surgery, which was carried out, as well as the fact that the deceased was in comma even at the time of discharge though his vitals were stable. PW1 – claimant Asha Devi has specifically stated that her brother Keshav Moudgil remained in coma till his death on 01.10.2015. Thus, in these circumstances to hold that the injuries received by Keshav Moudgil are not the causative factor because he may have died of a cardiac arrest or any other reason is clearly unjust, incongruous and downright absurd. The Act is a beneficial piece of legislation and the claimants have succinctly proved their case on the touchstone of preponderance of probabilities. Therefore, in the given facts and circumstances, learned Tribunal has clearly erred in holding that the evidence on record did not prove the injuries received by Keshav Moudgil in a motor vehicle accident which took place on 07.04.2014, to be a causative factor of his death on 01.10.2015. This finding of the learned Tribunal is, thus, set aside.

Claim petition was also dismissed on the ground that the claimants being the sisters of the deceased were not proved to be dependent upon the deceased, thus, they were not entitled to any compensation. Both the claimants admittedly in their fifties, are the unmarried sisters of Keshav Moudgil. It is claimed that the deceased Keshav Moudgil was unmarried and issueless and had no other legal heirs except the present claimants, who are the unmarried sisters of the deceased. PW1 - Asha Devi clearly stated that she alongwith her sister was unmarried and was dependent upon their

brother who was serving in Nitasha construction as an Accountant. The deceased had done his Masters in Economics. Asha Devi stated that though she alongwith her sister are well educated, having done their Masters in History, they were unemployed and unmarried. Asha Devi stated that she had been employed for some time about 20 years ago but now both of them were dependent upon their brother. Learned Tribunal has non-suited the claimants on the ground that as they could not prove themselves to be dependent upon the deceased, they are not entitled to any compensation. 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—

(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.”

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 be 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,

this Court 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 **Nandini**'s case (supra).

The claimants, in the instant case, have been accepted to be the legal representatives of the deceased - Keshav Moudgil who died unmarried and issueless. Keeping in view the facts and circumstances of the case, it is held that the claimants are not only entitled to file the claim petition but are also entitled to compensation on account of death of Keshav Moudgil, which occurred due to the injuries received by him in a motor vehicle accident which took place on 07.04.2014. Findings of the learned Tribunal on this issue are, thus, set aside. It is to be noted that the learned Tribunal has not quantified the compensation on the basis of the evidence on record, which has not even been discussed. Perforce the matter has to be remanded to the learned Tribunal for this purpose.

Award dated 01.12.2016 is, accordingly set aside to the extent as above. The matter is remanded to the learned Tribunal, which shall, needless to say, determine the quantum of compensation to which the claimants are entitled to on the basis of the evidence on record, keeping in view the judgments referred to above.

The parties to appear before the learned Tribunal on 16.09.2019.

As the matter arises out of a claim petition filed in the year

2014, the learned Tribunal to decide the matter expeditiously and preferably within four months.

Appeal is, accordingly, disposed of.

August 06, 2019
rts

(Lisa Gill)
Judge

Whether speaking/reasoned :	Yes/No
Whether reportable :	Yes/No