IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-1784-2018 (O&M)
Reserved on:08.08.2018
Date of decision:15.01.2019

New India Assurance Co. Ltd. ... Appellant

Versus

Avtar Singh & others ... Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

Present: Mr. Ashwani Talwar, Advocate for the appellant.

Mr. Ashwani Arora, Advocate for respondent No.1.

...

TEJINDER SINGH DHINDSA, J.

The New India Assurance Company Limited has filed the instant appeal assailing the award dated 06.12.2017 passed by the Motor Accident Claims Tribunal, Chandigarh and whereby a compensation amount of Rs.7,23,400/- has been awarded in favour of claimant, Avtar Singh on account of death of Sh. Dilbara Singh in a motor vehicle accident that took place on 28.10.2016.

The instant appeal came up for preliminary hearing on 05.04.2018 and while issuing notice of motion, the following order was passed:

> *"Inter alia contends that alleged claimant, namely Avtar Singh is nephew of deceased Dalbara Singh but no evidence has been brought on record except bald statement of PW2- Bahadur Singh, Sarpanch, in cross examination. The compensation could have been granted under Section 140 of the Motor Vehicles Act.*
>
> *Notice of motion to the claimants only, for 08.08.2018.*
>
> *There shall be interim stay beyond ₹50,000/- provided that the amount be deposited before the Tribunal and*

disbursed to the claimants against the security subject to the satisfaction of the Tribunal within a period of one month from today.

The statutory amount of ₹25,000/- deposited in this Court be sent to the Tribunal for onward disbursement to the claimants."

Mr. Ashwani Talwar, learned counsel representing the appellant/Insurance Company has raised a two fold submission. It is argued that the claimant-Avtar Singh was the nephew of deceased Dilbara Singh and as such was not a class-I heir. It is urged that under such circumstances, no compensation could have been awarded in favour of the claimant. Second submission raised by counsel is that the claimant had not led any evidence to prove dependency upon the deceased and as such he was at the most entitled to loss of estate and compensation as provided under Section 140 of the Motor Vehicles Act i.e. Rs.50,000/-.

Per contra, learned counsel representing respondent No.1/ Claimant, Avtar Singh has supported the impugned award and placed reliance upon a judgment of the Apex Court in **Smt. Manjuri Bera Versus The Oriental Insurance Company Limited & another, 2007 (10) SCC 643** to urge that a legal representative is entitled to compensation even if he was not dependant on the deceased and there was no loss of dependency.

Counsel for the parties have been heard at length.

It may be noticed that the claim petition has been filed by Avtar Singh-claimant under Section 166 of the Motor Vehicles Act (hereinafter to be referred to as 'the Act') seeking compensation of Rs.75

lakhs along with interest @ 12% per annum on account of death of Dilbara Singh on 26.10.2016. It was averred in the claim petition that on the fateful day at about 1:10 A.M. Dilbara Singh (since deceased) was walking on the extreme left side of the road in the area of village Bakarpur. An Innova vehicle bearing registration No.CH-03-W-6149 came at a very fast speed and being driven in a rash and negligent manner struck against the deceased. As a result, Dilbara Singh received grievous injuries and to which he succumbed. It was stated that at the time of death deceased was 52 years of age, was unmarried and was staying with the claimant. Dilbara Singh was stated to be working as a labourer and earning Rs.12,000/- per month.

The Tribunal returned findings in favour of the claimant and held that death of Dilbara Signh occurred due to rash and negligent driving of the offending/insured vehicle in the accident that took place on 28.10.2016.

As regards compensation aspect is concerned, the Tribunal accepted the version of the claimant as regards being nephew of the deceased. Taking notice of the photocopy of the ration card adduced on record of the claimant and which had been issued in the year 2013, reflecting the age of the deceased as 50 years, age of Dilbara Singh on the date of accident was accepted as 53 years. Monthly income of the deceased was assessed as Rs.9000/- per month. 10% addition in income was granted towards future prospects. 50% deduction was made towards personal and living expenses of the deceased. Annual dependency of the claimant was calculated as such to be Rs.59,400/-. Taking the age of the deceased to be 53 years multiplier of 11 was applied. The amount of compensation as such was computed tobe Rs.6,53,400/-. Further sum of Rs.15,000/- was granted towards loss of estate, Rs.40,000/- towards loss of consortium and Rs.15,000/- towards funeral expenses. The total amount worked out was Rs.7,23,400/-. Claimant was held entitled to the amount of compensation along with interest @ 7.5% per annum from the date of filing of the claim petition till realization. Liability to pay the compensation amount was held to be joint and several between the owner/driver and the Insurance Company.

The first submission raised by counsel for the appellant with regard to maintainability of the claim petition under Section 166 of the Act by contending that claimant-Avtar Singh was nephew of the deceased and as such was not a class-I heir is found to be without merit. In the case of **Smt. Manjuri Bera (Supra),** it had been noticed that the expression 'legal representative' has not been defined under the Act. However, under Section 2 (11) of the Civil Procedure Code, 'legal representative' means a person who in law represents the asset 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 was also noticed that the definition of 'legal representative' is in similar terms under 'The Arbitration and Conciliation Act, 1996' i.e. under Section 2(1)(g). It was observed that the definition contained in Section 2 (11) of the Civil Procedure Code is inclusive in character and its scope is wide and is not confined to legal heirs only. It would include heirs as well as persons who represent the estate even without title either as or administrators in possession of the estate of the deceased. All such persons would be covered by the expression 'legal representatives'. Even an earlier judgment in **Gujarat State Road Transport Corporation Vs. Ramanbhai Prabhatbhai & another, AIR 1987 (SC) 1690** was noticed and wherein it had been held that a 'legal representative' is 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.

In view of the above, the submission raised by counsel that a nephew of the deceased not being a class-I heir could not maintain a petition under Section 166 of the Act is rejected.

This Court, however, finds sufficient merit in the submission raised by counsel for the appellant/Insurance Company that the Tribunal in the impugned award has proceeded to award compensation by applying the multiplier method without even examining the issue of dependency.

In the case of **Sarla Verma & others Vs. Delhi Transport Corporation & another, 2009 (3) RCR (Civil) 77,** it was held that to quantify the compensation under Section 166, the following factors have to be considered:

> *"**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, the appropriate multiplier should be selected.*
>
> ***Step 3 (Actual calculation)*** *The annual contribution to the family (multiplicand) when multiplied by the appropriate multiplier gives the 'loss of dependency' to the family.*
>
> *Thereafter, amounts under conventional heads may be added as loss of consortium, loss of love and affection, loss of estate and funeral expenses."*

What clearly emerges is that in a case of death, it is primarily the loss of dependency that would determine the compensation amount. The basic figure which comes after exhausting the first two steps and as enumerated herein above is the loss of dependency and thereafter effect is given to the conventional heads of the claimant. Therefore, in a case where the claimant(s) are not dependent upon the deceased, the first two steps on which compensation is required to be assessed would not operate.

Adverting to the facts of the present case, the claimant while appearing as PW1 and referring to deceased Dilbara Singh inter alia stated as follows:

> *"He was staying with the dependent for the last 10 years, the dependent was residing with the deceased. The deceased was contributing his income for upbringing of the deponent....."*

Sh. Bahadur Singh, Sarpanch of the village appeared as PW2 and who was an eye witness to the accident. In his cross examination PW2 deposed as regards the relationship of the claimant with the deceased and the relevant extract thereof was as follows:

> *"The claim petition has been filed by real nephew of deceased Dilbara Singh who was unmarried. I am a village Sarpanch of the village where Dilbara Singh was residing. I do not have any relation with the deceased. I know the claimant Avtar Singh fully well. He is married and he is having one brother unmarried and one sister who is married. Mother of the claimant Avtar Singh is alive but his father has died three years back."*

It clearly emerges from the deposition of the claimant's witness PW2 that Avtar Singh is married and having his own family. The Tribunal has merely proceeded on the basis of a copy of the ration card placed on record wherein name of Dilbara Singh deceased was also reflected as a member of the family of the claimant. This solitary piece of evidence was not sufficient to prove any kind of dependency. Rather statement of PW2 Bahadur Singh would clearly show that Avtar Singh was married and has a family of his own. Under such circumstances, the Tribunal could not have embarked upon assessing compensation amount by adopting the multiplier method in the absence of any cogent and concrete evidence reflecting loss of dependency. In the case of **Smt. Manjuri Bera (supra),** it was held that where a 'legal representative' who is not dependent, files an application for compensation, the quantum cannot be less than the liability referable to Section 140 of the Act. The claimant herein, namely, Avtar Singh having failed to adduce any evidence reflecting loss of dependency would be entitled to compensation only under the conventional heads i.e. loss of love and affection, loss of estate and funeral expenses.

Keeping in view the dictum culled out by the Apex Court in **Rajesh Vs. Rajbir Singh, 2013 (9) SCC 54,** I would provide Rs.1 lakh for loss of love and affection, Rs.10,000/- for loss of estate and Rs.25,000/- towards funeral expenses.

The total compensation amount shall be Rs.1,35,000/-. The award dated 06.12.2017 passed by the Motor Accident Claims Tribunal, Chandigarh as regards quantum of compensation is modified accordingly. The rate of interest awarded by the Tribunal would however remain intact.

Appeal is allowed in the aforesaid terms.

15.01.2019 **(TEJINDER SINGH DHINDSA)**
harjeet **JUDGE**

i) Whether speaking/reasoned? Yes/No

ii) Whether reportable? Yes/No