

FAO No.5703 of 2014 (O&M)
Date of Decision: 17.10.2019

Mohinder Singh and others

.....Appellants

Versus

Raja Ram and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE NIRMALJIT KAUR

Present: Mr. Darshan L.Gulati, Advocate
for the appellants.

Mr. D.K. Prajapati, Advocate
for respondent No.3-Royal Sundram Alliance Insurance.

Respondent Nos.4, 7 and 8 ex parte
vide order dated 30.04.2015.

Mr. Sukhdeep Singh, Advocate
for respondent No.5.

Mr. Rajbir Singh, Advocate for
Mr. Sanjeev Goyal, Advocate
for respondent No.6-HDFC ERGO General Insurance.

NIRMALJIT KAUR, J. (ORAL)

CM-15822-CII-2014

Allowed, as prayed for.

Main Case

The present appeal has been filed by the claimants challenging the award dated 19.03.2014 passed by the Motor Accident Claims Tribunal, Karnal (for short, the Tribunal), vide which, only an amount of ₹50,000/- was awarded under the no fault liability.

At the outset, learned counsel for the appellants restricted his claim qua appellant No.6 i.e. unmarried Sister, who was aged 14 years at the time of accident.

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In view of the above, the appeal qua appellant Nos.1 to 5 is dismissed as not pressed.

Learned counsel for respondent No.3-Insurance Company while vehemently opposing the claim qua appellant No.6, submitted that there is no evidence on record that appellant No.6-Poonam Devi @ Gundri minor was dependent on the deceased. Reliance was placed on the judgments rendered by Hon'ble the Apex Court in cases Sarla Verma and others Versus Delhi Transport Corporation and others, 2009 (3) RCR (Civil) 77 and Smt. Manjuri Bera Vs. The Oriental Insurance Company Ltd. and another, 2007 (2) R.C.R. (Civil) 674, rendered by Hon'ble Chhattisgarh High Court in case Amoliram and others Vs. Siyaram and others, 2013 (2) AICJ 160, and rendered by learned Single Bench(s) of this Court in cases Pardeep Vs. Dharambir and others, 2015 (1) PLR 392, Kashmir Kumar and others Vs. Mohan Singh and others, 2014 (2) PLR 13 and Bijender and another Vs. Ranbir Singh and others, FAO-1628-2013, decided on 19.09.2017, to contend that since the deceased was admittedly residing separately, it cannot be said that the deceased was looking after his sister or that she was dependent upon her deceased brother.

Heard.

There is no dispute with law laid down by the aforesaid judgments referred by learned counsel for respondent No.3/Insurance Company. However, all the judgments pertain to either the married sons, married daughters, married brothers or married sisters. None of them pertain to a minor unmarried sister. Therefore, the judgments are not applicable to the facts of the present case.

In fact, Hon'ble the Apex Court in the case of Magma General Insurance Co. Limited Versus Nanu Ram @ Chuhru Ram and others, 2018 (4) RCR (Civil) 333, was pleased to hold as under:-

“8.4. The Insurance Company has submitted that the father and the sister of the deceased could not be treated as dependents, and it is only a mother who can be dependent of her son. This contention deserves to be repelled. The deceased was a bachelor, whose mother had pre-deceased him. The deceased's father was about 65 years old, and an unmarried sister. The deceased was contributing a part of his meagre income to the family for their sustenance and survival. Hence, they would be entitled to compensation as his dependents.”

The argument that there is no proof that she was not dependent deserves to be rejected being an outrageous argument in the facts of the present case. Appellant No. 6 had no parents. Neither her father and nor her brother was alive. She is an orphan. The only person to look after her was the deceased who being unmarried, whereas, all the other siblings were married and had their respective families to look after. Thus, on the face of it, she was 100% dependent on her unmarried brother. She was only 14 years of age, therefore, it cannot be said that she was working and was even able to look after herself and whether she was even in a position to afford two meals a day. In the absence of any living parent, she was almost like an unmarried dependent daughter on the deceased. The deceased was rather a father figure in her life.

This Court is shocked to hear the argument raised by learned counsel for respondent No.3/Insurance Company, challenging the dependency of the minor orphan sister on her unmarried brother.

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Accordingly, the present appeal is allowed qua appellant No.6 by modifying the award as under.

Applying the judgment rendered by Hon'ble the Apex Court in the case of National Insurance Company Ltd. versus Pranay Sethi and others, (2017) 16 SCC 680, the income is assessed at ₹4,000/- per month being an unskilled labourer and the claimant is entitled to the multiplier of 17 alongwith 40% future prospects as well as grant of ₹30,000/- towards loss of estate and funeral expenses. The question is now only about the deduction. No doubt, the deduction should be made @ 50% as the deceased was unmarried, however, the same is in case the parents are still alive. In the present case, there is only one claimant but since the claimant is an unmarried minor sister being 100% dependent on the deceased, it would be fair to make a deduction to the extent of 60%.

In view of the same, the enhanced amount of ₹4,36,960/- be paid to appellant No.6 as per the calculation provided under:-

Sr. No.	Head	Amount assessed
1	Income	₹4,000/- per month (4000 x 12 = 48000 per annum)
2	Future Prospects	40% (48,000 x 40% = ₹19,200) ₹48000 + 19200 = ₹67,200/-
3	Deduction	60% 60% of 67200 = ₹40320/- 67200 – 40320 = ₹26880/-
4	Multiplier	17
5	Compensation awarded	26880 x 17 = ₹4,56,960/-
6	Loss of estate	₹15,000/-
7	Funeral expenses	₹15,000/-
8	Total	₹4,86,960/-
9	Compensation awarded by the Tribunal	₹50,000/-
10	Differences	₹486960 – 50,000 = ₹436960/-

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Thus, the enhanced compensation of ₹4,36,960/- be paid to appellant No.6 within two months from the receipt of certified copy of this order alongwith 6% interest per annum from the date of filing of claim petition till its realization. In case the said amount is not paid within two months, the same shall be paid thereafter alongwith 12% interest from the expiry of the period of two months.

At this stage, the Court restrains itself from imposing heavy costs on the insurance company for opposing the present claim petition qua appellant No.6 on the ground that she cannot be considered as dependent knowing fully well that she was minor and unmarried girl.

The appeal is disposed of accordingly.

(NIRMALJIT KAUR)
JUDGE

17.10.2019
sandeep

Whether Speaking/Reasoned : Yes/No
Whether Reportable : Yes/No