

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

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FAO No.5316 of 2016 (O&M)

Date of decision: 30.01.2020

NATIONAL INSURANCE CO. LTD.

... Appellant

Versus

MANJIT KAUR AND OTHERS

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Gopal Mittal, Advocate for the appellant.

Mr. Munish Gulati, Advocate for respondents No.1 to 5.

REKHA MITTAL, J. (Oral)

CM No.18120-CII of 2016

Heard.

Allowed as prayed for. Delay of 90 days in filing the appeal stands condoned.

Main Case

Challenge in the present appeal has been directed against award dated 01.03.2016 passed by the Motor Accidents Claims Tribunal, Ferozepur whereby compensation has been assessed in respect of injuries sustained by Parminder Singh in a claim application filed by his wife, children and parents.

The first submission made by counsel for the appellant is that since the injured did not prefer any claim, the respondents/claimants cannot maintain application for grant of compensation in respect of injuries sustained by Parminder Singh for want of any authorization by said Parminder Singh. It is further submitted that even if Parminder Singh was not able to maintain the claim in his personal capacity, he could well file the claim application through his guardian or attorney, as the case may be.

Section 166 of the Motor Vehicles Act, 1988 (in short 'the Act') deals with application for compensation. A relevant extract therefrom, germane to the present controversy, reads as follows:-

- (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. [(2) Every application under sub-section (1) shall be made, at the option of the claimant, either to the Claims Tribunal having jurisdiction over the area in which the accident occurred, or to the Claims Tribunal within the local limits of whose jurisdiction the claimant resides or carries on business or within the local limits of whose jurisdiction the defendant resides, and shall be in such form and contain such particulars as may be prescribed: Provided that where no claim for compensation under section 140 is made in such application, the application shall contain a separate statement to that effect immediately before the signature of the applicant.] 3[***] [(4) The Claims Tribunal shall treat any report of accidents forwarded to it under sub-section (6) of section 158 as an application for compensation under this Act.]

Perusal of aforesaid extract leaves no manner of doubt that the claim in respect of injuries sustained by a victim in a motor vehicular accident can be maintained either by the injured himself or by any agent duly authorised by the person injured. In the case at hand, no such averment has been made by the respondents/claimants that they have filed the claim application being agent of the injured, duly authorised by him. The Tribunal despite noticing provisions of Sections 165 and 166 of the Act proceeded to assess compensation in place of permitting the respondents/claimants either to withdraw the claim application and file a fresh one on behalf of the injured or to amend the claim application. Since the claim application on behalf of the respondents/claimants for grant of compensation in respect of injuries sustained by Parminder Singh is not maintainable, award passed by the Tribunal is liable to be set aside and ordered accordingly.

In view of what has been discussed hereinbefore, the appeal is allowed. Award passed by the Tribunal is set aside. The matter is remitted to the Tribunal for decision of the case afresh. The respondents/claimants shall file an appropriate application before the Tribunal for amendment of the claim application to bring it in consonance with Section 166 of the Act. Parties through their counsel are directed to appear before the Tribunal on 19.02.2020.

30.01.2020

ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:

Yes / No

Whether reportable:

Yes / No