IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 2837 of 2020 (O&M)
Date of decision : February 12, 2021

1. Magma HDI General Insurance Company …Appellant
Versus

Rinkal and others …Respondents

FAO No. 2831 of 2020 (O&M)
2. Magma HDI General Insurance Company …Appellant
Versus

Rinkal and others …Respondents

CORAM:-HON'BLE MRS.JUSTICE LISA GILL

Present: Mr.Punit Jain, Advocate for the appellant.

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Lisa Gill, J.

This matter is being taken up for hearing through video conferencing due to outbreak of the pandemic, COVID-19.

This order shall dispose of FAO Nos. 2837 and 2831 of 2020.

Both the appeals, i.e. FAO Nos. 2837 and 2831 of 2020 are taken up for hearing and decision together as they emanate from claim petitions arising out of the accident which took place on 04.02.2014 in which Shri Ram and his wife Suman Jakhar passed away, though the petitions have been decided by the learned Motor Accident Claims Tribunal, Fazilka (hereinafter referred to 'the Tribunal') vide separate awards of even date i.e. 11.10.2019.

Claim petitions under Section 166 of the Motor Vehicles Act were filed by the claimants – respondents i.e. major son and married daughter of the deceased with averments that their parents, Shri Ram and Suman Devi along with

Ravinder Jakhar and Anu wife of Ravinder Jakhar were proceeding to Jaipur in a car bearing registration No. HR-26BC-2084. They were going from village Panj Kosi to Jaipur to attend a marriage. At about 9.00 a.m., when they reached ahead of village Baramaar Rajasthan, truck bearing registration No. RJ-31GA-5385 driven by respondent – Bhanwar Lal came from the opposite side. Being driven in a rash and negligent manner, it collided with the car, in which the deceased were travelling. Shri Ram @ Rajinder Jakhar (father of claimants), Ravinder Jakhar and his Anu succumbed to injuries and died at spot while Suman Devi (mother of claimants) was admitted at Civil Hospital, Rawatsar, thereafter referred to Hanumangarh. However, she succumbed to her injuries on the way to Hanumangarh. The accident was witnessed by Sunil son of Prithivi, who was driving car bearing registration No. PB-22H-5667. Due to impact of collision, the car in which the deceased were travelling was thrown over car bearing No. PB-22H-5667, driven by Sunil son of Prithvi. Car driven by Sunil was behind the car of the deceased and it was being driven at a moderate speed with proper distance being maintained. FIR No. 80 dated 04.02.2014 was registered against the respondent – driver. Claim petitions were contested by the respondents.

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

1. Whether claimants/petitioners are entitled to recover compensation from the respondents, if so at what rate? OPC
2. If issue No. 1 is proved, whether claimants are entitled to interest, if so at what rate? OPC
3. Whether the present claim petition is not maintainable? OPR
4. Whether the claimants have no locus standi or cause of action to file the present petition? OPR
5. Whether the present claim petition is bad for non-joinder and mis-joinder of the parties? OPR
6. Whether the present claim petition is time barred? OPR

7. Whether the respondent No. 1 was holding valid licence?OPR-1
8. Whether Truck bearing No. RJ-31GA-5385 was insured with respondent no. 1?OPR-1
9. Whether the aforesaid truck was having route permit?OPR-1
10. Relief.

Learned Tribunal after considering the evidence on record concluded that the accident in question took place due to rash and negligent driving of the offending truck by its driver.

In MACP Case RBT No. 8 of 03.01.2017/03.01.2019, deceased Ram @ Rajinder was accepted to be 54 years old. Though he was claimed to be an agriculturist earning Rs.30 lakhs per month, learned Tribunal considered him to be self-employed person and income was assessed while considering him to be a daily wager. Accordingly, his income was assessed as Rs.9000/- per month and learned Tribunal awarded a sum of Rs.9,42,000/- with interest at the rate of 9% per annum from the date of filing of the claim petition till date of actual realisation of the award. Deduction of 1/3rd was effected. Multiplier of 11 was applied as the deceased was 54 years old at that time. Additionally, a sum of Rs. 50,000/- on account of funeral expenses and costs of litigation was awarded besides a sum of Rs.1,00,000/- for loss of love and affection.

In MACP Case RBT No. 6 of 03.01.2017/03.01.2019, Suman Devi was accepted to be 50 years old. Learned Tribunal considered her to be self-employed person and income was assessed while considering her to be a daily wager. Accordingly, her income was assessed as Rs.9000/- per month and learned Tribunal awarded a sum of Rs. 10,86,000/- with interest at the rate of 9% per annum from the date of filing of the claim petition till date of actual realisation of the award. Deduction of 1/3rd was effected. Multiplier of 13 was applied as the deceased was 50 years old at that time. Additionally, a sum of Rs. 50,000/- on account of funeral expenses and costs of litigation was awarded besides a sum of Rs.1,00,000/- for loss of love and affection.

Aggrieved therefrom, these appeals have been preferred by the appellant – insurance company.

Learned counsel for the appellant has not raised any argument regarding finding of the learned Tribunal about the accident having taken place due to rash and negligent driving of the offending truck by its driver or of the said vehicle not being duly insured with the appellant or of the driver not having a valid and genuine driving licence on the date of the accident. Challenge to the award has been laid primarily on the quantum of compensation awarded to the claimants.

Learned counsel for the appellant vehemently argues that first and foremost the claimants being the married daughter and major son are not entitled to any compensation as they were not dependent upon the deceased. It is further submitted that deceased Ram @ Rajinder was claimed to be an agriculturist, therefore, land in question remains with the claimants. Learned Tribunal in this situation is stated to have wrongly assessed income of the deceased to be Rs.9000/- per month and awarded compensation accordingly. Furthermore, it is contended that deduction of 50% instead of 1/3rd should have been effected. Excessive compensation, it is submitted, has been awarded. It is, thus, prayed that both these appeals be allowed and impugned award dated 11.10.2019 be set aside.

Heard learned counsel for the appellant and have gone through the file with his assistance.

There is no dispute regarding the death of Shri Ram @ Rajinder and Suman Devi in the motor vehicle accident which took place on 04.02.2014 due to rash and negligent driving of offending truck by respondent - driver. It is further not denied that the claimants are indeed legal representatives/heirs of the deceased.

It is a settled position that a legal representative of the deceased is entitled to file a claim petition. The term legal representative is not defined in the Act. Section 2(11) of the CPC defines the term legal representative and 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 a settled position that a wider meaning has to be afforded to the term legal representative in the context of proceeding under the Act. The Hon'ble Supreme Court in **Montford Brothers of St. Gabriel and another v. United India Insurance and another 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. 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. 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 v. The Oriental Insurance Company Ltd. And another, 2007 (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. The statutory compensation to be received under the Act, it is observed, could constitute part of the estate of the deceased. It is not denied by learned counsel that in various decisions of the Hon'ble Supreme Court as well as of this High Court, parents of the deceased, married daughters have been held to be the legal heirs for the purposes of this Act and compensation duly awarded. In the decision titled **Smt. Gurdev Kaur and others versus Jharmal Singh and another 2017 (3) PLR 8**, it is held that even major sons and daughters do not lose the status of legal representatives and are entitled to maintain the claim petition on death of their parent. Compensation was duly awarded to the major sons in this case who were living jointly with the parent i.e. their father. Similar was the view expressed in **Gurmail Kaur and others versus Jawahar Lal Singla and others 2018 (3) Law Herald (P&H) 2730.**

Similarly, there is no merit in the argument raised by learned counsel for the appellant that the claimants are not entitled to any compensation as there is no loss of dependency. In case of **Miss Nandini Minor and others versus Amrik Singh and others 2011 (52) RCR (Civil) 882**, a co-ordinate Bench held as under:-

> " 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). Therefore, the learned Tribunal has rightly held the claimants entitled to file the claim petition and receive compensation.

A perusal of award in MACP Case RBT No. 8 of 03.01.2017/03.01.2019, reveals that learned Tribunal has discarded the claim raised by claimants regarding income of the deceased to be Rs.30 lakhs per month. Income of the deceased has been considered to be Rs.9,000/- per month taking him to be self-employed, daily wager. Deduction of 1/3rd has been correctly applied. Learned counsel for the appellant is unable to deny that before their death, both Ram @ Rajinder and his wife were living together. There is no evidence on record to indicate that son of the deceased was not living with them as claimed. It is common knowledge that sufficient expense is incurred by parents of a married daughter on various occasions, therefore, deduction of 50%, as urged, is not called for in the present case. Learned Tribunal has awarded a sum of Rs. 50,000/- towards funeral expenses instead of Rs. 15,000/- besides Rs.1,00,000/- for loss of love and affection to the claimants. However, even if said amount is reduced the same would be off set by award of future prospects at the rate of 10% in terms of judgment of the Hon'ble Supreme Court in **National Insurance Company Limited v. Pranay Sethi and others, 2017(16) SCC 680** and loss of filial consortium in terms of judgment of the Hon'ble Supreme Court in **Magma General Insurance Company Ltd. v. Nanu Ram Alias Chuhru Ram &Ors., 2018(4) RCR(Civil) 333, Anita Sharma and others Vs. The New India Assurance Co. Ltd. and another 2021(1) ALT 1 and Satinder Kaur @ Satwinder Kaur and others versus United India Insurance Co. Ltd. 2020 (3) RCR (Civil) 75**.

In MACP Case RBT No. 6 of 03.01.2017/03.01.2019, claimants have alleged the deceased Suman Devi to be an agriculturist, earning a sum of Rs.15 lakhs therefrom. Income of Suman Devi has been assessed to be Rs.9000/- per month. I do not find any infirmity therewith, especially keeping in view the fact that even if she is treated to a housewife, her income in the year 2014 cannot be assessed to be less than Rs.9000/- per month. Deduction of 1/3rd has been effected. Multiplier of 13 has been correctly applied. For the same reasoning as is applicable to the case of Shri Ram @ Rajinder, averment of learned counsel for the appellant regarding grant of excessive compensation under the conventional heads does not call for any interference. No ground is made out for reduction of the compensation awarded to the claimants. In the given factual matrix, I do not find it just and expedient to issue notice to the claimants on the question of higher rate of interest i.e. 9% as is urged by learned counsel for the appellant.

Keeping in view the facts and circumstances of the case, I do not find any no illegality and infirmity in award dated 11.10.2019 passed by the learned Motor Accident Claims Tribunal, Fazilka.

There is a delay of 26 days in filing of FAO-2837-2020 and of 32 days in filing of FAO-2831-2020. As the matter has been adjudicated on merits, decision on applications for condonation of delay is rendered academic. Applications are disposed of accordingly.

Appeals are accordingly dismissed with no order as to costs.

(LISA GILL)
February 12, 2021 **JUDGE**
rts

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