

Counsel for the appellant further submits that even in the claim petition, the appellant has stated himself to be the real nephew of the deceased, and, therefore, he is entitled to receive the compensation on account of the untimely death of Kunwar Pal.

It is next argued that the appellant, while appearing as PW1 has stated in his affidavit that the deceased was aged about 50 years and was working as a Chowkidar with one Ram Karan, Contractor and was earning Rs.8,000/- per month and the appellant is the nephew of the deceased who died issueless and was living with the appellant treating him as his son. Counsel for the appellant submits that even in the cross-examination of the appellant, the only suggestion given is that he was not dependent on the income of his deceased uncle but no cross-examination was done that he is not the real nephew of deceased Kunwar Pal.

Counsel for the appellant has further argued that even PW2 Ram Karan, with whom the deceased was working at salary of Rs.8,000/- per month has proved this fact that the appellant is the real nephew of deceased Kunwar Pal, who was unmarried and died issueless and used to treat the appellant as his son and resided with him. Counsel for the appellant has, thus, argued that the finding recorded by the trial Court on Issue Nos.1 and 2 is erroneous that the appellant was not dependent on the income of deceased Kunwar Pal. It is also argued that no witness was produced by the respondents to rebut the claim of the appellant that he, being the legal representative of Kunwar Pal is entitled to the compensation.

Counsel for the respondent-Insurance Company has argued that the Tribunal has rightly recorded the finding that the appellant was not dependent on the income of his uncle (deceased), who died issueless. It is also argued that no class-1 heir has come forward to stake any claim and, therefore, it cannot be held that no class-1 heir is

surviving and, therefore, the appellant is not entitled to any compensation.

It is also argued that it has come in the evidence of the plaintiff himself that he himself is working as a labourer and is earning Rs.2,000/- to Rs.2,500/- per month and his wife is a house-wife.

In reply, the counsel for the appellant has relied upon the judgment of the Hon'ble Supreme Court passed in New India Assurance Company Vs. Somwati and others, 2020(9) SCC 674 to submit that the appellant is entitled to compensation towards loss of consortium, being the real nephew of the deceased.

After hearing the counsel for the appellant and going through the lower Court record, I find no force in the argument that the appellant is entitled to receive compensation as legal representative of deceased Kunwar Pal in the absence of any cogent evidence.

However, considering the fact that it has come in the evidence that the deceased was a bachelor and issueless aged about 50 years and was joint in mess with the appellant, since long which is also reflected in the joint ration card as well as the statement of PW2, I deem it appropriate to award a lump sum compensation of Rs.40,000/- to be paid by respondent-Insurance Company to the appellant.

With the aforementioned observation, the appeal is disposed of, accordingly.

(ARVIND SINGH SANGWAN)
JUDGE

July 13, 2022
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Whether speaking/reasoned : YES / NO
Whether reportable : YES / NO