

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

FAO-8781-2014 (O&M)

Date of Decision: September 19, 2022

Kamaljit Kaur

...Appellant

VERSUS

Balvir Singh and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Satinder Khanna, Advocate
for the appellant.

None for respondents No.2 and 3.

ARCHANA PURI, J.

Challenge in the present appeal is to the Award dated 15.04.2014 passed by the Motor Accident Claims Tribunal, whereby, compensation of Rs.50,000/- (Rs.25,000/- each) has been granted to the married daughters of deceased Darshan Singh, who had died in a motor vehicular accident on 11.01.2009.

At the very outset, it is pertinent to mention that claim petition was initially, filed by Mariam Ester and her sons, Mandeep Singh and Navdeep Singh, thereby, seeking compensation, on account of Darshan Singh, in a motor vehicular accident. However, during the pendency of the said claim petition, in pursuance of an application under Order 1 Rule 10 CPC, filed by married daughters of the deceased Darshan Singh, both the married daughters, namely Ravinder Kaur and Kamaljit Kaur, were

impleaded as respondents No.5 and 6, in the claim petition. So far as, taking place of the accident is concerned, this fact is not disputed by the contesting respondents No.1 to 3 i.e. driver, State of Punjab, Department of Punjab and Punjab Roadways Transport Corporation. They have though admitted about the accident but they imputed, rashness and negligence, on the part of deceased Darshan Singh. However, suffice to mention that the Tribunal had reached the conclusion about the accident to be result of rash and negligent driving of the bus bearing registration No.PB-10BR07837, driven by respondent No.1. This finding has not been challenged by respondents No.1 to 3, by way of filing any appeal or revision. Thus, the findings of the Tribunal, relating to the accident having caused due to rash and negligent driving of the bus driven by respondent No.1, has attained finality.

Also, it is pertinent to mention that in the Award, it has been concluded by the Tribunal that present respondents No.4 to 6, are not the wife or sons of deceased Darshan Singh. This finding has also not been challenged by respondents No.4 to 6 (who were claimants before the Tribunal) by way of filing appeal or revision, if any. As such, this finding has also attained finality.

Vide Award dated 15.04.2014, respondents No.5 and 6 in the claim petition i.e. Ravinder Kaur and Kamaljit Kaur, who are married daughters of the deceased, a sum of Rs.50,000/- has been awarded, on account of love and affection i.e. to the extent of Rs.25,000/- each and liability has been fastened upon respondents No.1 to 3, jointly and severally, to pay the award amount. Besides the same, also respondents No.5 and 6

were held entitled to amount of compensation along with interest @ 7.5% from the date of filing of claim petition, till the date of realization.

Feeling aggrieved by the aforesaid Award, Kamaljit Kaur (who was impleaded as respondent No.6 before the Tribunal) who is married daughter of deceased Darshan Singh, had filed the present appeal.

It is submitted by learned counsel for the appellant that the compensation ought to be granted to the married daughters, who were entitled to estate of the deceased.

It is pertinent to mention that Kamaljit Kaur herself had stepped into witness box as RW-2 and her affidavit tendered into evidence is Ex.RA. Therein, besides deposing about her relationship with deceased Darshan Singh, has also deposed that age of the deceased Darshan Singh was 55 years and he was working in Military Engineering Service and was getting salary of Rs.30,000/- per month. She also deposed that deceased was spending the amount upon her and her sister, till death. This is the entire evidence coming on record, at the instance of respondents No.5 and 6, in the claim petition.

Now, none is contesting the present appeal.

Before the Tribunal, relationship of the appellant with the deceased, as such, is not disputed. It should be noted that the claim petition under Section 166 of the Motor Vehicle Act has not been filed by the appellant. Rather, it had been filed by one Mariam Ester and her sons, Mandeep Singh and Navdeep Singh. It was only, in pursuance of the application under Order 1 Rule 10 CPC, filed by the applicants, that present appellant as well as her sister have been impleaded as a party. The

appellant, though, in her affidavit has stated in a vague manner, about her father to be working in Military Engineering Service and getting salary of Rs.30,000/- per month but no such evidence, to substantiate this plea, has been brought on record. Even though, she had stated about the amount used to be spent by her father upon her as well as her sister, till his death, but there is nothing, as such, coming on record, relating to the expenditure, so made.

All the legal representatives are required to be impleaded as party in the petition under Section 166 of the Motor Vehicle Act. Legal representative is the one, who suffers on account of death of a person, due to motor vehicular accident and need not necessarily be wife, husband, parent and child. However, the fact remains that the appellant is the married daughter of the deceased. The appellant or her sister Ravinder Kaur-respondent No.7 have not filed any claim petition, at their instance, to seek compensation. It was, in pursuance of the claim petition filed by one Mariam Ester and her sons, Mandeep Singh and Navdeep Singh that married daughters of the deceased Darshan Singh had been impleaded as respondents No.5 and 6 in the claim petition. As aforesaid, the fact remains that respondents No.5 and 6 are married daughters of the deceased and hence, legal representatives.

In *Manjuri Bera vs. Oriental Insurance Company Limited and another*, 2008 (10) SCC 643, it has been observed as herein given:-

“12. As observed by this Court in Custodian of Branches of BANCO National Ultramarino v. Nalini Bai Naique [1989] 2SCR810 the definition contained in Section 2(11) CPC is

*inclusive in character and its scope is wide, it is not confined to legal heirs only. Instead it stipulates that a person who may or may not be legal heir competent to inherit the property of the deceased can represent the estate of the deceased person. It includes heirs as well as persons who represent the estate even without title either as executors or administrators in possession of the estate of the deceased. All such persons would be covered by the expression 'legal representative'. As observed in **Gujarat State Road Transport Corporation v. Ramanbhai Prabhatbhai and Anr. [1987] 3 SCR 404** 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.*

13. There are several factors which have to be noted. The liability under Section 140 of the Act does not cease because there is absence of dependency. The right to file a claim application has to be considered in the background of right to entitlement. While assessing the quantum, the multiplier system is applied because of deprivation of dependency. In other words, multiplier is a measure. There are three stages while assessing the question of entitlement. Firstly, the liability of the person who is liable and the person who is to indemnify the liability, if any. Next is the quantification and Section 166 is primarily in the nature of recovery proceedings. As noted above, liability in terms of Section 140 of the Act does not cease because of absence of dependency. Section 165 of the Act also throws some light on the controversy. The explanation includes the liability under Sections 140 and 163A.

14. Judged in that background 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. Therefore, even if there is no loss of dependency the claimant if he or she is a legal representative will be entitled to compensation, the quantum of which shall be

not less than the liability flowing from Section 140 of the Act.”

In ***National Insurance Company Limited v. Birender [(2020) 11 SCC 356]***, a claim petition filed by major married and earning sons of the deceased mother, the Hon'ble Supreme Court held as follows:-

“12. The legal representatives of the deceased could move application for compensation by virtue of clause (c) of Section 166 (1). The major married son who is also earning and not fully dependent on the deceased would be still covered by the expression “legal representative” of the deceased. This Court in Manjuri Bera (supra) had expounded that liability to pay compensation under the Act does not cease because of absence of dependency of the concerned legal representative. Notably, the expression “legal representative” has not been defined in the Act. xxx xxx xxxx

13. In paragraph 15 of the said decision, while adverting to the provisions of Section 140 of the Act, the Court observed that even if there is no loss of dependency, the claimant, if he was a legal representative, will be entitled to compensation. In the concurring judgment of Justice S.H. Kapadia, as His Lordship then was, it is observed that there is distinction between “right to apply for compensation” and “entitlement to compensation”. The compensation constitutes part of the estate of the deceased. As a result, the legal representative of the deceased would inherit the estate. Indeed, in that case, the Court was dealing with the case of a married daughter of the deceased and the efficacy of Section 140 of the Act. Nevertheless, the principle underlying the exposition in this decision would clearly come to the aid of the respondent Nos. 1 and 2 (claimants) even though they are major sons of the deceased and also earning.

14. It is thus settled by now that the legal representatives of the deceased have a right to apply for compensation. Having said that, it must necessarily follow that even the major married and earning sons of the deceased being legal representatives have a right to apply for compensation and it would be the bounden duty of the Tribunal to consider the application irrespective of the fact whether the concerned legal representative was fully dependent on the deceased and not to limit the claim towards conventional heads only. The evidence on record in the present case would suggest that the claimants were working as agricultural labourers on contract basis and were earning meagre income between Rs.1,00,000/ and Rs.1,50,000/ per annum. In that sense, they were largely dependent on the earning of their mother and in fact, were staying with her, who met with an accident at the young age of 48 years.”

(emphasis added)

In the case in hand, married daughters were though not living with the deceased father and there is no evidence, coming on record about married daughters to have been financially helped by the deceased but however, the word '**dependent**' has a different meaning in different connotation. Some may be dependent in terms of money and other may be dependent in terms of service.

Thus, dependency is a relevant criteria to claim compensation for loss of dependency. It does not mean financial dependency only. Dependency includes gratuitous service dependency, physical dependency, emotional dependency, psychological dependency, and so on and so forth, which can never be equated in terms of money. This is all the more important to consider, as the mother of appellant and respondent No.7, was not alive, much prior to the death of their father. In these circumstances, it

is quite obvious that the bond between the deceased father and daughters was eternal, more specifically, on account of absence of the mother in the lives of the daughters.

In the light of the same, appellant as well as her sister-respondent No.7, are entitled to compensation, on account of death of their father. However, the fact remains that there is no other evidence, coming on record, with regard to the avocation followed by the deceased and the extent of his earnings. There is vague assertion made only in the affidavit of the appellant. But fact remains that they are married daughters of deceased. Keeping in view the eternal bonding between the deceased and married daughters and also considering the background of the Indian society, where the parents, keep on rendering assistance, in one form or the other to the married daughters, to express their love and affection and also on account of '**need**' at times, the appellant and her sister (respondent No.7) are entitled to compensation.

In the given circumstances, a sum of Rs.50,000/-, so granted to the appellant and respondent No.7, is on a lesser side. Keeping in view the eternal bonding between married daughters and the deceased, more so, in the absence of their mother, the aforesaid amount is enhanced to **Rs.1,50,000/-, to be apportioned equally among the appellant as well as respondent No.7.**

In view of the aforesaid terms, the present appeal stands disposed of.

September 19, 2022
Vgulati

Whether speaking/reasoned
Whether reportable

(ARCHANA PURI)
JUDGE
Yes
Yes/No

KAMALJIT KAUR V/S BALVIR SINGH ETC

Present: Mr.Satinder Khanna, Advocate
for the appellant.

None for respondents No.1 to 3.

Perusal of the paper-book reveals that the present appeal has been filed by Kamaljit Kaur, married daughter of deceased, to challenge the Award dated 15.04.2014.

Initially, respondents No.4 to 6 namely Mariam Ester, Mandeep Singh and Navdeep Singh had filed a petition under Section 166 of the Motor Vehicle Act, to seek compensation, on account of death of Darshan Singh, in a motor vehicular accident. However, vide Award dated 15.04.2014, the claim of the claimants i.e. Respondents No.4 to 6 was declined and only respondents No.5 and 6, i.e. present appellant Kamajit Kaur as well as her married sister namely Ravinder Kaur, who has been impleaded as respondent No.7 in the present appeal, were held entitled to compensation Rs.50,000/-, being daughters of deceased, on account of love and affection, to the extent of Rs.25,000/- each.

So far as, respondents No.4 to 6, who were claimants before the Tribunal, are concerned, the aforesaid Award has attained finality, as they have not challenged this Award by way of filing any appeal/revision etc.

In these circumstances, there is no necessity to issue notice to respondents No.4 to 6 in the present appeal.

So far as, remaining respondents are concerned, they have also not made appearance, despite service.

To come up for arguments, after lunch.

(ARCHANA PURI)
JUDGE

September 19, 2022
Vgulati