

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO 2268/2006(O&M)

Date of decision: 26.04.2023.

Smt. Chinu widow of Jagdish Kumar through her LR

.....Appellant

Vs.

Ashok Kumar and others

.....Respondents

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Sagar Aggarwal, Advocate for the appellants.

Mr. Lalit Garg, Advocate for the Insurance Company.

Nidhi Gupta, J.

Present appeal arises out of claim petition no. 30/2005 filed by the injured-claimant Smt. Chinu (now deceased) and represented by her sole legal representative Sahil Kashyap. Prayer in this appeal is for enhancement of compensation of Rs.10,69,416/- granted by the Motor Accident Claims Tribunal, Karnal (hereinafter referred to as 'the Tribunal') vide Award dated 7.12.2005 in a petition u/s 166 of the Motor Vehicles Act,1988 (hereinafter referred to as 'the Act') due to due to admitted 100% disability suffered by injured claimant-Smt. Chinu (now deceased) in a motor vehicular accident that took place on 12.11.2001 on account of rash and negligent driving of Tata Sumo No. DL-3CF-4932 (hereinafter referred to as 'the offending vehicle'), being driven by respondent no.1, owned by respondent no.2, and insured by respondent no.3 herein.

It is submitted by the ld. counsel for the appellant that the compensation as awarded by the ld. Tribunal is liable to be enhanced in

view of the fact that admittedly, the injured claimant Smt. Chinu was 100% disabled in the accident in question and therefore, the amounts granted by the Id. Tribunal of Rs.1 lac on account of pain and suffering; 1 lac for loss of amenities and expectation of life; Rs. 1 lac for future medical and incidental expenses; Rs.25,000/- towards costs of catheters and bags; Rs. 1 lac for purchasing automatic wheel chair and making alteration in the house for constructing ramp; Rs.25,000/- for special diet; Rs. 1 lac for attendant charges; and Rs.5 lacs for permanent disability, are on lower side. It is submitted that in view of the fact that claimant Chinu was only about 30 years at the time of accident and as per disability certificate Ex.P13 had become permanently disabled to the extent of 100%, the said amounts are liable to be enhanced. It is submitted that the claimant was in a vegetative state after the accident and had become paralyzed and had no sensation or feeling below the abdomen. She had suffered fracture of base of skull and during her treatment her right lower leg was amputated and due to contusion of her spinal discs she had become paraplegic and had been rendered a crippled and required help for every bodily function. In support, Id. counsel places reliance upon judgment of Hon'ble Supreme Court in **Master Ayush v The Branch Manager, Reliance General Insurance Co. Ltd. & anr., LawFinder Doc Id # 1961934**; and judgment of this Court in **Royal Sundram General Insurance Co. Ltd. V Meenakshi Mann & anr., LawFinder Doc Id # 1652927**.

In response, it is submitted by the Id. counsel for the respondent Insurance Company that the claimant Chinu has died on 21.7.2012 and is now represented by her son Sahil Kashyap. It is submitted that as per law laid

down by this Court in **Kashi Ram v State of Haryana and others, 1992 ACJ 748; Harkirat Singh v Inderjit Kaur and others, 200 ACJ 250**; and by Madhya Pradesh High Court in **Bhagwati Bai and anr. V Bablu @ Mukund and others, Law Finder Doc Id # 125166**; by Himachal Pradesh High Court in **Smt. Ram Ashari and others v HRTC and another Law Finder Doc Id # 83233**, it has been held that where the injured-claimant had died during the pendency of the claim petition, or the pendency of the appeal arising therefrom, there is abatement of the claim petition and therefore, right of the legal representative to sue survives only to the extent of loss of estate.

It is further submitted by the ld. counsel for the Insurance Company that moreover, the amount of approximately Rs. 9.78 lacs spent by the injured-claimant Smt. Chinu (now deceased) has been duly reimbursed by the Indian Oil Corporation where her deceased husband was working prior to the accident.

Heard ld. counsel.

Counsel for the appellant is unable to dispute the legal position in respect of proposition of law that in case of death of injured-claimant during pendency of claim petition or the appeal arising therefrom, the claim of legal representative can only be limited to loss of estate. Ld. counsel for the appellant is even unable to show any judgment contrary to the judgments relied upon by the ld. counsel for the Insurance Company in this regard.

Moreover, perusal of the record clearly shows that it has been recorded by the ld. Tribunal that Rs.9,78,667/- spent by the injured-claimant (now deceased claimant) Smt. Chinu, has been reimbursed to her by the Indian Oil Corporation, and therefore, no amount was spent by the claimant on her treatment. This fact has also been duly admitted by the counsel

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representing the claimant before the Tribunal, whose statement to this effect was recorded on 9.2.2005. Even now ld. counsel for the appellant is unable to dispute that medical expenses to the extent of Rs.9,78,667/- have been reimbursed to the claimant.

Accordingly, in view of the above-noted undisputed factual and legal position, it is clear that as per law the appellant is entitled to only Rs.16,500/- towards loss of estate.

Accordingly, impugned Award is modified to the extent that in addition to Rs.10,69,416/- already granted by the ld. Tribunal, in addition a sum of Rs.16,500/- be granted to the appellant herein towards loss of estate.

Disposed of as above.

Application(s),if any, stand disposed of.

26/04/2023.
Joshi

(Nidhi Gupta)
Judge

Whether speaking/reasoned
Whether reportable

Yes
Yes/No