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

**R-820** **FAO No.2037 of 2012**
**Date of Decision : 17.01.2023**

Raj Kumar and Others ....Appellants

VERSUS

Rakesh Kumar and Others ....Respondents

**CORAM : HON'BLE MRS. JUSTICE ALKA SARIN**

Present : Mr. Sandeep Kumar Yadav, Advocate for the appellants.

Mr. Shubham Gupta, Advocate for
Mr. D.P. Gupta, Advocate for respondent no.3.

**ALKA SARIN, J. (Oral)**

The present appeal has been preferred against the award dated 10.02.2012 passed by the Motor Accident Claims Tribunal, Narnaul (hereinafter referred to as the 'Tribunal') whereby the claimant-appellants were held entitled to an amount of Rs.40,000/- towards loss of love and affection and Rs.5000/- towards funeral expenses in view of the fact that the claimant-appellants, who are the sons and daughters of the deceased, were all major.

Learned counsel for the claimant-appellants has relied upon the judgment by the Hon'ble Supreme Court in the case of **National Insurance Company Limited vs. Birender & Ors. [2020 (1) RCR (Civil) 694]** to contend that it was the bounden duty of the Tribunal to consider the application irrespective of the fact that the legal representatives of the deceased were major. He would further contend that though only the amount as referred to above has been awarded, however, minimum wages at the time of the accident i.e. 09.10.2009 were Rs.3914/- per month. It is further the contention of learned counsel for the claimant-appellants that as per the law laid down in the cases of **Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr. [(2009) 6 SCC 121]; National Insurance Company Ltd. vs. Pranay Sethi & Ors. [(2017) 16 SCC 680]; Magma General Insurance Company Limited vs. Nanu Ram alias Chuhru Ram & Ors. [(2018) 18 SCC 130] and N. Jayasree & Ors. vs. Cholamandalam M.S General Insurance Company Ltd. [2021 (4) RCR (Civil) 642]**, a multiplier of 7 would be applicable in the present case; keeping in view the number of dependants, the deduction of 1/5$^{th}$ ought to have been applied; the claimant-appellants would also be entitled to compensation under the conventional heads to the tune of Rs.16,500/- towards loss of estate and Rs.16,500/- towards funeral expenses. An amount of Rs.44,000/- to each of the claimant-appellants is also to be awarded towards loss of consortium.

*Per contra* learned counsel for respondent no.3 has vehemently contended that the Tribunal has rightly awarded the amount as the claimant-appellants were all major.

I have heard learned counsel for the parties.

Hon'ble Supreme Court in the case of **Birender** *(supra)* has held as under :

> *"14. 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 dependant 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. In Manjuri Bera (supra), the Court observed thus:-*

> *"9. In terms of clause (c) of sub-section (1) of Section 166 of the Act in case of death, all or any of the legal representatives of the deceased become entitled to compensation and any such legal representative can file a claim petition. The proviso to said sub-section makes the position clear that where all the legal representatives had not joined, then application can be made on behalf of the legal representatives of the deceased by impleading those legal representatives as respondents. Therefore, the High Court was justified in its view that the appellant could maintain a claim petition in terms of Section 166 of the Act.*
>
> *10. .....The Tribunal has a duty to make an award, determine the amount of compensation which is just and proper and specify the person or persons to whom such compensation would be paid. The latter part relates to the entitlement of compensation by a person who claims for the same.*
>
> *11. According to Section 2(11) CPC, "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. Almost in similar terms is the definition of legal representative under the Arbitration and Conciliation Act, 1996 i.e. under Section 2(1)(g).*
>
> *12. As observed by this Court in Custodian of Branches of BANCO National Ultramarino v. Nalini Bai Naique [1989 Supp (2) SCC 275 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 SRTC v. Ramanbhai Prabhatbhai [(1987) 3 SCC 234 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."*

*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.*

*15. 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 dependant 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 L 1,00,000/- and L 1,50,000/- per annum. In that sense,* *they were largely dependant 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."*

Keeping in view the law laid down in the above referred case, the claimant-appellants would be entitled to compensation. Though, no amount has been awarded under various heads by the Tribunal, however, keeping in view the fact that income of the deceased is being assessed as Rs.3914/- per month only on the basis of minimum wages prevalent at that time and the amounts under the various heads are to be assessed as per the law laid down by Hon'ble Supreme Court in cases of **Sarla Verma** *(supra),* **Pranay Sethi** *(supra),* **Magma General Insurance Company Limited**



*(supra)* and **N. Jayasree** *(supra),* this Court deems it appropriate to assess the amount of compensation here and not remand the case back to the Tribunal since the claimant-appellants have been waiting for the compensation since 2009.

In view of the above, the enhanced amount of compensation to which the claimant-appellants are held entitled to is re-calculated as under :

| Sr. No. | Heads | Compensation Awarded |
|---|---|---|
| 1 | Annual Income of the deceased | [3914 x 12] = Rs.46,968/- |
| 2 | Annual dependency of the claimants after deduction of 1/5th | [46,968 - 9394] = Rs.37,574/- |
| 3 | Multiplier of 7 | [37574 x 7] = Rs.2,63,018/- |
| 4 | Loss of Consortium<br>(i) Parental (7 children) | Rs.3,08,000/- (44000 x 7) |

| | | |
|---|---|---|
| 5 | Loss of Estate | Rs.16,500/- |
| 6 | Funeral Expenses | Rs.16,500/- |
| | **Total Compensation** | **Rs.6,04,018** |
| | **Amount Awarded by the Tribunal** | **Rs.45,000/-** |
| | **Enhanced amount** | **Rs.5,59,018/-** |

The amount in excess of and over and above the amount awarded by the Tribunal shall also attract interest @ 6% per annum from the date of filing of the claim petition till realization of the entire amount. The amount shall be apportioned equally between the claimant-appellants.

In view of the above discussion, the present appeal is allowed and the award passed by the Tribunal is modified accordingly. Pending applications, if any, also stand disposed off.

**( ALKA SARIN )**
**JUDGE**

**17.01.2023**
**jk**

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO