

2023:PHHC:054091

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

(i)

FAO-8657-2014 (O&M)

Jagwa Ram and others

...Appellants

VERSUS

Jogender and others

...Respondents

(ii)

FAO-10258-2014 (O&M)

Kitabo

...Appellant

VERSUS

Jogender and others

...Respondents

Date of Decision: April 18, 2023

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Narender Kaajla Advocate
for the appellants (in both the appeals).

Mr.Rajneesh Malhotra, Advocate
for respondent No.3-Insurance Company (in both the appeals).

ARCHANA PURI, J.

These two appeals emanate from common Award dated 14.08.2014 passed by learned Motor Accident Claims Tribunal, thereby, granting compensation to Jagwa Ram, husband only, on account of death of Vidya Devi and further denying any compensation to appellant-claimant Kitabo, who allegedly sustained injuries, in the same accident.

FAO-8657-2014 relates to the claim petition filed by

appellants-claimants Jagwa Ram and his sons, vis-a-vis, death of Vidya Devi and married daughters, have been impleaded as respondents No.4 and 5, in the claim petition.

FAO-10258-2014 relates to the claim petition filed by appellant-claimant Kitabo, thereby, asserting to have sustained injuries in the same accident.

On appraisal of the evidence adduced, learned Motor Accident Claims Tribunal had awarded compensation only to Jagwa Ram, husband, vis-a-vis, death of Vidya Devi and dismissed the claim petition filed by Kitabo.

So far as the fact of accident and imputation of rashness and negligence, upon the driver, namely Jogender of offending Auto Three wheeler bearing registration No.HR-61A-9027 is concerned, suffice to consider the finding, so recorded by learned Tribunal, which have not been challenged further, by the persons, so made liable.

The aforesaid two appeals have been filed, thereby, seeking enhancement of the compensation, vis-a-vis, death of Vidya Devi and for grant of compensation, vis-a-vis, injuries allegedly sustained by Kitabo, who was accompanying, Vidya Devi, at the time of said accident.

So far as, FAO-8657-2014 is concerned, at the very outset, it is pertinent to take note of the fact that learned Tribunal denied compensation to the claimants, who are husband, major sons of the deceased Vidya Devi, on account of '**loss of dependence**', as it was observed that they (together with married daughters of the deceased), being capable of earning, thus,

cannot be said to be dependent upon deceased Vidya Devi. However, claimant No.1 Jagwa Ram, husband of the deceased, was granted compensation to the extent of Rs.25,000/- towards funeral expenses and last rights, Rs.20,000/- towards loss of consortium, being husband and Rs.5,000/- was granted, towards loss of estate. In total, a sum of Rs.50,000/- was granted to claimant No.1-Jagwa Ram.

However, such '**work upon**' by learned Tribunal, thereby, denying compensation, on the count of '**loss of dependence**' is palpably wrong. Very true, as evident from the evidence adduced, children of Vidya Devi, are grown up sons and daughters of the deceased, but however, the fact remains that they are the legal representatives of the deceased.

At this juncture, it is important to make reference to the decision rendered in *National Insurance Company Limited v. Birender (2020) 11 SCC 356*, wherein, a claim petition was filed by major married and earning sons of the deceased mother and 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)

As evident, in the case in hand, Manoj Kumar and Vikas Kumar, are sons of deceased Vidya Devi. They are grown up sons and even Rekha and Savita, are the married daughters of deceased Vidya Devi. Even though, sons are stated to be living with the deceased mother and the daughters are not so living with the mother, but however, fact remains that the children, though are grown up and may be settled in their own lives, but it cannot be said that they were not dependent upon their mother. It is pertinent to mention that the word '**dependent**' has a different meaning in different connotation. Some may be dependent in terms of money and others 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. Thus, considering the same, children of deceased as well as her husband, ought not to be deprived of the compensation, to be so worked upon.

In this backdrop, there has to be '**work upon**' done qua death of Vidya Devi. In the claim petition, deceased Vidya Devi was asserted to be a street hawker and was indulging in sale of bangles and her earnings are stated to be Rs.10,000/- per month. Even though, the earnings, as such, have not been worked upon by learned Tribunal, as the compensation, on the count of 'loss of dependence' was denied, but however, the fact remains that it is categoric claim of the appellants-claimants, about indulgence of the

deceased in street hawking and sale of bangles. Manoj Kumar, one of the sons of deceased, has stepped into witness box as PW-1 and he has categorically deposed about the avocation, so followed by his deceased mother Vidya Devi. Likewise, Kitabo, the companion of the deceased, at the relevant time, who is an eye witness to the accident, has also deposed about said avocation, so followed by deceased Vidya Devi. There is no evidence to the contrary led on the record. Thus, in the light of no documentary evidence, qua the extent of earnings of deceased, coming on record, by making some guess work, proximate to the reality, the earnings of the deceased, from this avocation, can conveniently be taken to be Rs.2,000/- per month.

Besides the aforesaid earnings from the avocation, so followed by the deceased as street hawker, it is also pertinent to mention that deceased, being wife and mother, should be contributing a lot towards household affairs. In our Indian society, even if a woman goes out of house, to earn livelihood, even then, she looks after the household affairs. She renders multifarious duties towards her husband and children. Considering the same, the value of services of the deceased, in modest estimate, can conveniently be taken to be Rs.2000/- per month. Considering the same, the annual valuation is worked upon as Rs.24,000/-. In the light of the same, the amount of compensation, so granted, has to be worked upon.

Keeping in view the age of the deceased, established to be 45 years, at the time of her death and also keeping in view the avocation, so followed by her, an addition of 25% has to be made, on the count of 'future

FAO-8657-2014 and connected case

prospects'. In view of the same, compensation, on the count of 'loss of dependence' as Rs.2000/- (monthly earnings) + Rs.2000/- (value of services, so rendered by the deceased, towards her house) comes to be Rs.4,000/- and after addition of 25% as 'future prospects', the same comes to be Rs.5,000/- per month.

In view of the aforesaid conclusion, as per *Smt.Sarla Verma vs. Delhi Transport Corporation and anr., 2009(3) RCR (Civil) 77*, the deduction has to be to the extent of $1/3^{\text{rd}}$ on account of personal living expenses. After making deduction of $1/3^{\text{rd}}$, it comes to be Rs.5000-1666 ($1/3^{\text{rd}}$)=Rs.3,334/-. Therefore, the annual loss of dependency comes to be Rs.3334x12=Rs.40,008/-. Keeping in view the age of the deceased i.e. 45 years, the appropriate multiplier to be applied is '14'. By applying this multiplier, the compensation, on the count of 'loss of dependency', comes to be Rs.40,008x14=Rs.5,60,112/-.

Besides the aforesaid, the appellants-claimants are entitled to compensation under conventional heads. However, learned Tribunal had granted a sum of Rs.25,000/- towards funeral expenses and last rites and Rs.20,000/- was granted on the count of loss of consortium and Rs.5000/- towards loss of estate, to claimant-appellant No.1. However, as per *Magma General Insurance Company Limited vs. Nanu Ram @ Chuhru Ram, 2018(18) SCC 130*, each of the appellants-claimants are entitled to compensation under the head of 'loss of consortium'. As per *Pranay Sethi's case (supra)*, the extent of consortium payable, is stated to be Rs.40,000/-, with 10% increase, after every three years. Thus, inclusive of

this enhancement, is Rs.44,000/-, not only for husband Jagwa Ram, but also towards all the four children of the deceased, who are impleaded as appellants-claimants No.2 and 3 and respondents No.4 and 5.

Besides the same, the compensation granted towards funeral expenses is on higher side. As per *Pranay Sethi's case (supra)*, a sum of Rs.15,000/- was to be paid as 'funeral expenses', with enhancement of 10%, after every three years and prevalent rate, as such, on this count is Rs.16,500/-. Likewise, for the 'loss of estate' also, compensation so granted by learned Tribunal is on lesser side and the same is enhanced from Rs.5000/- to Rs.16,500/-.

Thus, loss of dependency comes to be Rs.5,60,112/-, loss of consortium comes to be Rs.2,20,000/- (Rs.44,000/- to each of the appellant-claimant and respondents No.4 and 5), Rs.16,500/- as loss of estate and Rs.16,500/-, as funeral expenses. Therefore, the total comes to be **Rs.8,13,112/-**.

Out of the compensation, so now awarded, a sum of Rs.4,13,112/- shall be paid to appellant-claimant No.1-Jagwa Ram and a sum of Rs.1 lakh each shall be paid appellants-claimants No.2 and 3 (sons of the deceased) and respondents No.4 and 5 (daughters of the deceased). The interest component and remaining terms, shall remain the same, as ordered by learned Tribunal.

Now reverting to the FAO-10258-2014, which relates to the denial of compensation to appellant-claimant Kitabo, who allegedly, sustained injuries, in the accident in question.

As per version of the appellant-claimant Kitabo, she was accompanying Vidya Devi, since deceased, at the time of accident. It is categorical claim of Kitabo that she had sustained injuries, in the accident in question. She had stepped into witness box as PW-2 and in her affidavit Ex.PW2/A, she has categorically deposed about sustaining of injuries and further, has also deposed about her indulgence in street hawking and sale of bangles and further, about her earnings to be Rs.10,000/- per month.

Learned Tribunal, in the impugned Award, had made observation that there is no evidence, with regard to the injuries suffered by Kitabo and the money spent by her, on her treatment. She has also not proved on file any disability, suffered by her, nor she has placed on record, any document, which shows that she has suffered injuries, as mentioned by her or has incurred expenses on her treatment. Precisely, on this account, she was held not entitled to any compensation.

However, the observations, so made, are palpably wrong. At the very outset, it is pertinent to mention that in a claim petition, which is a summary proceeding, before the Motor Accident Claims Tribunal, the standard of proof is much below than what is required in a criminal case as well as in a civil case. Undoubtedly, the enquiry before the Tribunal is a summary enquiry and, therefore, does not require strict proof of liability. Nonetheless, in the case in hand, FIR has been lodged by Kitabo, on the same very day, wherein, she had categorically stated about accompanying Vidya Devi, at the time of accident and also stated about having received injuries. The MLR, having given to the police authority, speaks about the

sustaining of injuries by Kitabo and she was advised X-ray examination. In this regard, it is pertinent to mention that bed head ticket of appellant-claimant Kitabo, has been proved as Ex.P6, which categorically speaks about her admission in the hospital on 07.05.2012 at 11.25 a.m., i.e. soon after the accident and speaks about her date of discharge to be 08.05.2012. It mentions about the receipt of injuries in a road side accident and furthermore, also speaks about the conducting of x-ray and there is stated to be fracture. No doubt, no further document of carrying out of the x-ray examination and the nature of the treatment, as such, has come on record, but however, appellant-claimant Kitabo has brought on record, receipt dated 07.05.2012, which relates to deposit of Rs.100/-, in indoor patient. Furthermore, other receipts, which are Mark-A to Mark'J, also relate to the amounts incurred, to the extent of Rs.450/-, by Kitabo.

Besides the same, no other medical evidence, as such, has come on record, but anyhow, suffice to consider the aforesaid documents, which amply establish about the sustaining of injuries by Kitabo, in the same accident, though, manner of treatment, undergone by her, as such, is not established. In the light of the same, outrightly, the compensation, as such, cannot be denied to appellant-claimant Kitabo.

On account of the injuries, so sustained, even though, they may have been minor or found to be simple, but it is evident that some amount has been incurred, on account of the injuries, so sustained by Kitabo. Definitely, taking place of the accident and more particularly, on account of death of Vidya Devi, in the same accident, appellant-claimant Kitabo, is

bound to have undergone trauma, which must have also disturbed her schedule of indulging in street hawking and also affected her contribution, towards the house for few days.

Keeping in view the aforesaid fact situation and the circumstances, so emanating, soon after taking place of the accident, this Court deem it appropriate, to grant a *lumpsum* amount of Rs.40,000/-, as compensation to appellant-claimant Kitabo, along with interest and terms, as ordered by learned Tribunal, in the claim petition filed by Jagwa Ram and others.

In view of the aforesaid terms, both the appeals stand allowed. The impugned Award dated 14.08.2014 stands modified, to the extent, as indicated aforesaid.

April 18, 2023
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	Yes