

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
111+213
FAO-7102-2016 (O&M)
Date of decision: 10.05.2023

Bhola Ram

...Appellant(s)

Vs.

United India Insurance Co. Ltd. & Others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Ashok Bhardwaj, Advocate
for the appellant.

NIDHI GUPTA, J.

CM-3281-CII-2022

This is an application under Order 22 Rule 3 of Code of Civil Procedure, 1908 for impleading legal representatives of (now deceased) appellant-Bhola Ram.

After going through the contents of the application, the same is allowed subject to all just exceptions, and Amended Memo of Parties is taken on record.

MAIN APPEAL

Present appeal has been filed by the claimant seeking enhancement of compensation of Rs.4,01,000/- granted by Motor Accident Claims Tribunal, Sangrur (hereinafter referred to as "the learned Tribunal") vide Award dated 22.03.2016 passed in MACT No.134 of 01.07.2015 filed under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act"). The claimant is the father of

deceased-Kulwinder Kumar @ Monu who was about 23 years of age at the time of death.

2. It is stated by learned counsel for the appellant that during pendency of this appeal, appellant-Bhola Ram has expired on 30.11.2018 and his LRs, who are the four sisters and two brothers aged 41, 35, 36, 37, 34 and 32 years respectively of deceased-Kulwinder Kumar @ Monu, have now been brought on record as claimants/appellants.

3. Brief facts of the case are that the learned Tribunal on the basis of pleadings and evidence adduced before it concluded that deceased-Kulwinder Kumar @ Monu had died due to injuries suffered by him in a motor vehicular accident that took place on 27.04.2015 at about 1:30 pm due to rash and negligent driving of car bearing registration No.PB-31K-1419 (hereinafter referred to as “the offending vehicle”) being driven by respondent No.2, owned by respondent No.3 and insured by respondent No.1. Learned Tribunal awarded compensation as above along with interest @ 7.5% per annum from the date of claim petition till realisation of the amount.

4. As the claimant was proven to be not a dependent on the income of the deceased, learned Tribunal granted compensation of Rs.50,000/- as statutory compensation provided under Section 140 of the Act under No Fault Liability clause. Learned Tribunal further granted Rs.2,66,169/- as reimbursement for medical bills (Exhibit A1 to Exhibit

A92); Rs.25,000/- for funeral charges; Rs.50,000/- for love & affection; and Rs.10,000/- for travelling.

5. Learned counsel for the appellant(s) seeks enhancement of compensation on the ground that learned Tribunal was in error in granting compensation only under the No Fault Liability as, under Section 166 of the Act, 'legal representatives' are entitled to file claim petition. It is submitted that in the present case, learned Tribunal is in error in not assessing income of the deceased in accordance with law and therefore, the impugned Award deserves to be set aside. Learned counsel relies upon judgment of this Court in **Ikattar Singh & Another Vs. Dalvir Singh & Others FAO-4738-2014 decided on 11.04.2016.**

6. No other argument is raised on behalf of the appellant.

7. I have heard learned counsel for the appellant.

8. Perusal of impugned Award reveals that it is admitted on record that at the time of death of the deceased-Kulwinder Kumar @ Monu, claimant-Bhola Ram was an employee in Electricity Board and was fetching a salary of Rs.32,000/- per month.

9. Even in Para 8 of the Grounds of present Appeal, claimant appellant has pleaded as below:-

“8. That in the present case though the appellant/claimant is employed in the Punjab State Electricity Board, but at the same time he has the responsibility of 4 married daughters and one unmarried son. Elder son of the appellant is married, looking after his own family. Therefore in these given facts and circumstances the finding of the Ld. MACT is non

speaking. No finding has been returned by the Ld. MACT, whether the responsibility of the married daughters, can be met with the meagre salary of the claimant. Respectful submission of the appellant is that in the social background and culture of India, the responsibility of married daughters never ends. The parents are socially bound to manage and incur expenditures on each and every festival, marriage and death ceremonies etc. in the family of their daughters. In this way every member of the family contribute towards the aforesaid expenditures.”

10. From the above pleadings it is crystal clear that the claimant was not dependent on the income of the deceased for his sustenance. Even in respect of the present appellants, it is undisputed that all the four daughters of the claimant/sisters of the deceased are married, and are well settled in their matrimonial homes. Admittedly, one son of the claimant is also married and he *“is looking after his own family”*. Pecuniary dependence of the second son of the claimant/elder brother of the deceased is by no measure established on record. Clearly, therefore, the appellants are not entitled to compensation as per law.

11. No doubt as per Section 166 of the Act an application for compensation may be made by all or any of the ‘legal representatives’ of the deceased. The term ‘legal representatives’ is not defined in the Act. As per Section 2(11) CPC ‘legal representative’ is a person who in law represents the estate of the deceased, and has been interpreted to include a person who intermeddles with the estate of the deceased. However, in the context of, and for the purposes of the Act and claims arising therefrom, the Hon’ble Supreme Court in case

of **Manjuri Bera, 2007 ACJ 1279 (SC)/Law Finder Doc ID # 126848**, has correctly drawn/upheld the distinction drawn between “right to apply for compensation” and “entitlement to compensation”. Hon’ble Supreme Court in said case of **Manjuri Bera** (supra) has held that *“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.”* It is thus, clear that ‘Entitlement to compensation’ has been held to be of one who is ‘dependent’ on the earnings of the deceased. In the present case, learned Tribunal has instead granted Rs.50,000/- under Section 140 of the Act under the ‘No Fault Liability’, which is in conformity with the decision of the Hon’ble Supreme Court in case of **Manjuri Bera** (supra).

12. In the facts of the present case, and in regard to the issue at hand, the following observations expressed by the High Court of Orissa in case of **New India Assurance Co. Ltd. vs. Antaryami Purohit and Others, Law Finder Doc ID # 216254**, are apposite:

“However, the pecuniary loss suffered by the legal representatives as a result of death of the deceased always depends on the actual dependency and the pecuniary benefit they were enjoying from the income of the deceased for food, shelter, education and to meet other day-to-day requirements. The compensation payable towards loss of dependency must be the benefit which the dependants were enjoying and expected to enjoy in future, as a result of their dependency on the deceased. Therefore, though all the legal representatives of the deceased have a locus standi to file a claim petition under section 166 of the Motor Vehicles Act, 1988, in order to get the compensation towards loss of dependency they have to further establish loss of pecuniary benefit being enjoyed by them as dependants on the deceased.”

13. I am in complete concurrence with the abovesaid observations of the Orissa High Court. In this regard, reference may also be made to judgment of the Andhra Pradesh High Court in case of **Dilip Kumar Moses Vs. VJ. Cyrice, 2003 (1) TAC 266 (AP)**.

14. Learned counsel for the appellant relies upon judgment of this Court in **Ikattar Singh (supra)** however, he can derive no benefit from the said judgment as in the relied upon case claimants were major sons of the deceased. Hon'ble Supreme Court in **New India Assurance Co. Ltd. Versus Vinish Jain and Ors., Law Finder Doc Id # 977386**, has categorically held that major children being not dependent on the deceased are not entitled to compensation. Above said decision of the Hon'ble Supreme Court has been followed by this Court in **Harpal Kaur and Others Vs. Sita Ram and Others, Law Finder Doc Id # 921104; Narender Nayyar Vs. SheodanSingh and others, Law Finder Doc Id # 626136; and Sajna Devi and Others Vs. Vijender Kumar and Others, Law Finder Doc Id # 921100**.

15. In view of the above facts, I find no ground is made out to interfere in the impugned Award. Present appeal accordingly stands **dismissed**.

16. Pending application(s) if any also stand(s) disposed of.

10.05.2023
Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No