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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-8232-2015 (O&M)
Date of decision : 30.01.2023

Sukhpal Kaur ... Appellant(s)

Versus

Nirmal Gour & Ors. ... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Dheeraj Kumar Narula, Advocate for the appellant.

Mr. Rajnish Malhotra, Advocate for respondent No.3.

ALKA SARIN, J. (ORAL)

The present appeal has been preferred by the claimant-appellant against the award dated 09.10.2015 passed by the Motor Accident Claims Tribunal, Sirsa (hereinafter referred to as 'Tribunal'). The factum of the accident, in the present case, is not in dispute and hence the facts are not being adverted to.

The only issue in the present case is whether the claimant-appellant would be considered as a legal representative and dependent of the deceased.

Learned counsel for the claimant-appellant would contend that the Tribunal has only awarded an amount of Rs.82,000/- (Rs.50,000/- on account of 'no fault liability', Rs.12,000/- towards medical expenses and Rs.20,000/- towards funeral expenses) on the ground that the daughter could not be considered as a dependent. Learned counsel for the claimant-appellant has relied upon the judgments of the Hon'ble Supreme Court in the cases of **Gujarat State Road Transport Corporation, Ahmedabad Vs. Ramanbhai Prabhatbhai & Anr. [1987 (3) SCC 234]** and **N. Jayasree & Ors. vs. Cholamandalam M.S General Insurance Company Ltd. [2021 (4) RCR (Civil) 642]** to contend that the issue is no longer *res intra* and even a mother-in-law of the deceased has been held to be a legal representative and entitled for compensation. Learned counsel for the claimant-appellant has further relied upon the judgment of the Hon'ble Supreme Court in the case of **National Insurance Company Ltd. Vs. Birender & Ors. [2020 (11) SCC 356]** to contend that even major married and earning sons of the deceased, being legal representatives, have a right to apply for compensation in case of accidental death. Learned counsel for the claimant-appellant has further contended that in view of the fact that no future prospects are to be given keeping in view the age of the deceased as 62 years, this Court instead of remanding the matter may determine the compensation to be paid as per the law laid down by the Hon'ble Supreme Court 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** (supra).

Per contra, learned counsel for respondent No.3 has contended that the amount has rightly been awarded by the Tribunal and that there is no scope of enhancement.

Heard.

In the present case, the following compensation was awarded by the Tribunal to the claimant-appellant :

Sr. No.	Heads	Compensation Awarded
1	No fault liability	Rs.50,000/-
2	Medical expenses	Rs.12,000/-
3	Funeral expenses	Rs.20,000/-
4	**Total Compensation**	**Rs.82,000/-**
	Interest	**7.5% per annum**

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

> "*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 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 :*
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> > *"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 subsection 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."*

13. In para 15 of Manjuri Bera [Manjuri Bera v. Oriental Insurance Co. Ltd., (2007) 10 SCC 643 : (2008) 1 SCC (Cri) 585], 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 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 Rs.1,00,000/- and Rs.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".*

The claimant-appellant in the present case is the daughter of the deceased and the only legal representative. In view of the law laid down, she would be held to be entitled for the compensation. Keeping in view the fact that the present case pertains to an accident which took place in the year 2013, this Court deems it appropriate to assess the compensation in view of the law laid down by the Hon'ble Supreme Court in the cases of **Sarla Verma** (supra), **Pranay Sethi** (supra), **Magma General Insurance Company Limited** (supra) and **N. Jayasree** (supra).

The minimum wages at the time of the accident were Rs.5200/- per month and hence the income of the deceased is assessed as Rs.5200/- per month. The age of the deceased in the present case was 62 years and hence addition towards future prospects would not be applicable. A deduction of 1/3rd would be applicable and keeping in view the age of the deceased a multiplier of '7' would be applicable. The amount of Rs.16,500/- towards loss of estate and Rs.16,500/- towards funeral expenses would be payable and further an amount of Rs.44,000/- towards consortium. Accordingly, the recalculated amount of compensation is assessed as under :

Sr. No.	**Heads**	**Compensation Awarded**
1	Monthly income	Rs.5,200/-
2	Annual income	[5200/- x 12] =Rs.62,400/-
3	Deduction 1/3rd	[62400-20800] =Rs.41,600/-
4	Multiplier of 7	[41600 x 7] = Rs.2,91,200/-
5	Loss of estate	Rs.16,500/-
6	Funeral expenses	Rs.16,500/-
7	Loss of Consortium : (i) Parental	Rs.44000/-
8	**Total Compensation**	**Rs.3,68,200/-**
	Amount Awarded by the Tribunal	**Rs.82,000/-**
	Enhanced amount	**Rs.2,86,200/-**

The enhanced amount i.e. **Rs.2,86,200/-** shall carry interest @ 7.5% from the date of filing of the claim petition till realization.

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

(ALKA SARIN)
JUDGE

30.01.2023
Yogesh Sharma

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