

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
286
FAO-2015-2017 (O&M)
Date of decision: 08.05.2023

Rohit Kumar

...Appellant(s)

Vs.

Jaibir & Others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Ms. Seema Pasricha, Advocate
for the appellant.

Mr. Punit Jain, Advocate
for respondent No.3.

NIDHI GUPTA, J.

Present appeal has been filed by the sole claimant seeking enhancement of compensation of Rs.50,000/-granted by Motor Accident Claims Tribunal, Jhajjar (hereinafter referred to as "the learned Tribunal") vide Award dated 10.10.2016 passed in MACP No.23 of 2015/2016 (RBT) filed under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act"). The sole claimant is the brother of deceased-Mohit who was aged 24-year-old at the time of death. Learned Tribunal granted above compensation as 'No Fault Liability' under Section 140 of the Act.

2. Brief facts of the case are that the learned Tribunal on the basis of pleadings and evidence adduced before it concluded that deceased-Mohit had died due to injuries suffered by him in a motor vehicular accident that took place on 18.10.2014 due to rash and negligent driving of truck bearing registration No.HR-63B-5354

(hereinafter referred to as “the offending vehicle”) being driven by respondent No.1, owned by respondent No.2 and insured by respondent No.3. Learned Tribunal awarded compensation as above along with interest @ 7% per annum from the date of filing claim petition till realisation. Respondents were held jointly and severally liable to pay the amount of compensation.

3. Learned counsel for the appellant seeks enhancement of compensation inter alia on the grounds:

a) that the claimant is the 26-year-old elder brother of the deceased-Mohit and is the sole legal representative of the deceased;

b) that the learned Tribunal was in patent error in holding claimant entitled for compensation of only Rs.50,000/- under No Fault Liability as, as per Section 166 of the Act, an application for compensation can be filed by a “legal representative”. It is submitted that as per Section 2(11) of the Code of Civil Procedure, 1908 “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);

c) that the deceased was unmarried and parents of the deceased had already expired and therefore, the claimant/appellant was

the only legal representative of the deceased and was therefore entitled to compensation under the Act. Therefore, learned Tribunal was in patent error in granting compensation only under No Fault Liability;

d) It is further submitted that it was the specific case of the claimant that he was unemployed and dependent upon the deceased for his sustenance. It is submitted that the deceased was a Graduate and used to support the appellant by selling milk and deceased was earning Rs.9,000/- per month therefrom. In support, the claimant had also examined PW4-Manjeet who was friend of the deceased. Further, the claimant had himself appeared as PW3 and testified that he himself was unemployed and his parents had expired prior to deceased-Mohit and therefore, he was dependent upon the deceased. It is submitted that therefore, dependency of the appellant on the deceased was also proved before the learned Tribunal yet, learned Tribunal has ignored this evidence and held to the contrary;

e) It is reiterated that the learned Tribunal failed to appreciate the unrebutted statements of claimant Rohit as PW-3 and Manjit as PW-4 who had categorically stated that Mohit deceased was supporting the family as they were two brothers only in the family and there was no other legal heir surviving. The appellant was unemployed and was dependent upon the deceased Mohit for his day to day expenses. It is further stated that Mohit was unmarried and had been residing with his brother/appellant and his family and had been contributing towards his family out of his earning;

f) that in any event as per Section 166 of the Act, dependency is not mandatory to maintain petition under Section 166 of the Act. It is submitted that case of **Manjuri Bera Vs. Oriental Insurance Co. Ltd. & Another 2007 ACJ 1279**, relied upon by the learned Tribunal is distinguishable;

g) that the learned Tribunal erred while not assessing the income of the deceased, although it is proved on record that the deceased Mohit was working as Milkman and used to earn Rs.9000/- p.m. and during his life time had appeared in SSC examination and cleared the said exam, he had been issued letter for appointment as LDC by Mukhalay Tatrakshak Kshetra (Poorv), Headquarter, coast Guard Region (East) Chennai as per documents Mark E to G and he was about to earn more than he had been earning. While passing the award, the learned Tribunal ought to have considered the income of the deceased, hence the award passed by the learned Tribunal is liable to be set aside.

4. In support of her contentions, learned counsel relies upon judgments of various Courts in **Charanjit Kaur Vs. Suresh Kumar (P&H) Law Finder Doc ID # 582005; Smt. Nanhi Vs. Sukhwinder Singh (P&H) Law Finder Doc ID # 492223; Montford Brothers of St. Gabriel Vs. United India Insurance (SC) Law Finder Doc ID # 518802; Dr. Gangaraju Sowmini Vs. Alavala Sudhakar Reddy (Telangana & Andhra Pradesh) (FB) Law Finder Doc ID # 751017; Kashmir Kumar Vs. Mohan Singh (P&H) Law Finder Doc ID #540837; New India Assurance Co. Ltd. Vs. Kuldeep Singh (P&H) Law Finder Doc ID # 744072; United India**

Insurance Co. Ltd. Vs. Devender Kumar (P&H) Law Finder Doc ID # 838501; Bijender Vs. Ranbir Singh (P&H) Law Finder Doc ID # 964199; and Future General India Insurance Co. Ltd. Vs. Soumita Roy (Calcutta) (DB) Law Finder Doc ID # 960194.

5. Per contra, it is submitted by learned counsel for respondent No.3/Insurance Company that being a “legal representative” and “entitlement of compensation” are two different aspects. It is submitted that a Division Bench of this Court in **Piara Singh Vs. Punjab State (P&H)(FB) Law Finder Doc ID # 34621** has held that locus standi to file a claim petition under the Act and entitlement to compensation, are different rights. It is submitted that even the Hon’ble Supreme Court in **Mrs. Hafizun Begum Vs. Md. Ikram Heque (SC) Law Finder Doc ID # 130627** has held that the right to file a claim petition has to be considered in the background of right to entitlement. It is submitted that therefore, there is no error in the Award passed by the learned Tribunal.

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

7. I have heard learned counsel for the parties.

8. On the basis of the pleadings of the parties, the following issues were framed by the learned Tribunal:

“1. Whether the accident resulting into the death of Balram son of Ramesh Kumar and Mohit son of Virender Singh took place due to rash and negligent driving of vehicle i.e. Truck bearing registration No.HR63B-5354 by respondent no.1, as alleged? OPP

2. If issue No.1 is proved in affirmative, whether the petitioners in MAC Petition No.1 of 2015 titled as “Smt. Shanti and Anr. Vs. Jaibir etc.” are entitled to compensation, if so, to what amount and from whom? OPP

3. If issue No.1 is proved in affirmative, whether petitioner in MAC Petition No.54 of 2015 titled as “Rohit Kumar Vs. Jaibir etc.” is entitled to compensation, if so, to what amount and from whom? OPP

4. Whether the petition is not maintainable in the present form? OPR.

5. Whether respondent no.1 was not holding a valid and effective driving license on the date of alleged accident, if so its effect? OPR-3.

6. Whether respondent No.2 had contravened the terms and conditions of the insurance policy, if so its effect? OPR-3.

7. Relief.”

9. Onus to prove issue No.3 i.e. whether appellant was entitled to compensation, was upon the appellant. To prove this, it is the submission of the learned counsel of the appellant that an application under Section 166 of the Act can be made by a ‘legal representative’. Undisputedly, for purposes of the Act, ‘legal representative’ has been interpreted to mean one who is ‘dependent’ on the deceased. While assessing the quantum, the multiplier system is applied because of deprivation of dependency. Thus, pecuniary dependence of the claimant on the income of the deceased has to be proven.

10. In order to prove the pecuniary dependence of the appellant upon the deceased, much reliance has been placed on the

evidence of PW4. Affidavit PW4/A in evidence as submitted by PW4-Manjeet is available at page 59 of the LCR. Para 2 of the said affidavit is reproduced hereinbelow:-

“2. That said deceased Mohit was my friend, who was working as milkman. He used to collect milk from Village Bamnoli and supply the same to Bahadurgarh town to his various daily customers. My friend Mohit oftenly told me that he sold about 80 liter of milk per day (in morning and evening) to his various customers at Bahadurgarh at a profit of Rs. 5 per liter. Oftenly I also saw him collecting the milk from my village. In this way deceased Mohit used to earn Rs. 9,000/- per month by working as milkman after all deducting all expanses. I know this fact very well that Rohit, the real the brother of Mohit alongwith his family was dependent on Mohit. Because Rohit is unemployed. Mohit used to reside with his brother Rohit and he used to contribute towards his family out of his earnings because Mohit was unmarried one and his father and mother had already expired. Earlier Rohit used to look after Mohit.”

(Emphasis supplied)

11. In his cross examination too, (at page 63 of the LCR) PW4-Manjeet has admitted that *“I have no documentary proof regarding the income and occupation of deceased Mohit.”*

12. Thus, besides the bald statement of PW4–Manjeet, there is nothing else on record to indicate the income and occupation of the deceased as a milkman. On the contrary, even as per PW4, the deceased was studying and there was no documentary proof of alleged income and occupation of the deceased. In my considered view, the above

said evidence cannot be held to establish the factum of the occupation or the income of the deceased as a milkman @ Rs.9000/- per month. Needless to say, if income of the deceased is not proven, then case of the appellant that the deceased was maintaining the appellant is also not proved. Even otherwise, it has been stated by PW4 that earlier the appellant was maintaining the deceased. There is no elaboration available on record to show when and how and in what circumstances, did the appellant become dependent on the deceased. Thus, the story put forth by the claimant does not inspire confidence. It is clear that the appellant has concocted his dependence on the deceased just to claim the compensation.

13. The record further reveals that as per Mark A (ration card) of the appellant (at page 23 of the LCR) the appellant is married and has a child. It is therefore, highly improbable that the appellant was not supporting his own family and was relying on his unemployed, younger brother to support his family.

14. Moreover, dependence of the appellant on the deceased is further disproved from the fact that the deceased was a graduate and trying to get a job by appearing in competitive examination for clerical post. Accordingly, in view of these facts, I concur with the conclusion drawn by the learned Tribunal that in these circumstances:

“...it appears that the deceased was not only unemployed but also dependent upon the petitioner, his elder brother. There is no cogent evidence on record so

as to prove that petitioner Rohit was dependent upon his brother deceased Mohit or in fact deceased Mohit was earning any definite income and contributing to the petitioner Rohit. Thus, the petitioner has although the locus-standi to file the claim petition as a legal representative of his unmarried brother, as their parents, have already expired, but he is not entitled to claim compensation on account of loss to his income due to the death of his brother and he is entitled to receive compensation under no fault liability in terms of under Section 140 of Motor Vehicle Act, 1988 as held by the Hon'ble Supreme Court of India in **Manjuri Bera** case (supra) relied upon by the learned counsel for the respondent no.2. Therefore, the **Montford Brothers of St. Gabriel & Anr.** case (supra) relied upon by his learned counsel cannot be applied as the facts of the case in hand are entirely different from that case in which the deceased was drawing monthly salary and was contributing to the claimant. Even in **Sarla Verma Versus Delhi Transport Corporation 2009(3) RCR (Civil) 277** Supreme Court of India in para no.15, it has been observed that in the absence of evidence to the contrary the brothers and sisters will not be considered as dependents. The case of the respondent no.3 also finds support from **Leela & Ors.** Case (supra) relied upon by their learned counsel. Therefore, in view of Smt. Majuri Bera case (supra) the petitioner cannot derive any benefit from **Charanjit Kaur** case (supra) and **Kashmir Kumar & Ors.** Case (supra) relied upon by the learned counsel for the petitioner. Similarly, **Rajesh & Ors.** Case (supra) and **Kala Devi & Ors.** Case (supra) can also not be applied in the facts and circumstances of the present

case. Thus, the petitioner under Section 140 of the Motor Vehicle Act is entitled to the amount of Rs.50,000/- as compensation. So, this issue is decided in favour of the petitioner, accordingly.”

15. As regards argument of the learned counsel for the appellant that under Section 166 of the Act, claim petition can be filed by ‘legal representative’, and dependence of the claimant upon the deceased is not required to be proved in order to be entitled for compensation, I am in complete disagreement with the above said argument.

16. 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.

17. 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.”

18. 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)**.

19. In the relied upon case of **Birender (supra)** the deceased was 48 years of age, and a categorical finding was returned in the said case that the major claimants therein were dependent on the earning of the deceased. Admittedly, that is not so in the present case. Other judgements relied upon by learned counsel for the appellant are distinguishable on

facts and the issues involved therein, and therefore, appellant can derive no benefit from the same.

20. Hon'ble Supreme Court in '**New India Assurance Company Ltd. Vs. Vinish Jain and Others, Law Finder Doc ID#977386**', and this Court in **Harpal Kaur and Others Vs. Sita Ram and Others, Law Finder Doc Id # 921104; Narender Nayyar Vs. Sheodan Singh and Others, Law Finder Doc Id # 626136; and Sajna Devi and Others Vs. Vijender Kumar and Others, Law Finder Doc Id # 921100**, have held that major children of the deceased are not entitled to compensation. In the present case, the appellant/claimant is a major, married brother of the deceased. Accordingly, he cannot be held entitled to compensation under the Act.

21. In view of the above discussion, I find no merit in the present appeal and the same hereby stands **dismissed**.

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

08.05.2023

Sunena

(Nidhi Gupta)

Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No