

228 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-7826-2017 (O&M)
Date of Decision: 09.02.2023

United India Insurance Company Limited Appellant

Versus

Harmandeep Kaur and others Respondents

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Raj Kumar Bashamboo, Advocate,
for the appellant.

Mr. Prem Singh, Advocate,
for respondents No.1 to 4

Mr. Aminder Singh, Advocate,
for respondents No.5 and 6.

RAJBIR SEHRAWAT, J. (ORAL)

The present appeal has been filed by the appellant against the award dated 23.08.2017 passed by the Motor Accident Claims Tribunal, Sangrur (in short, 'the Tribunal'), whereby an amount of Rs.11,17,800/- has been awarded as compensation with interest at the rate of 9% per annum on account of death of Gurdeep Singh.

For the purpose of the present appeal, the parties would be referred to as they were described in the original claim petition filed before the Tribunal.

The sole ground raised by the learned counsel for the appellant is that, undipustedly, the deceased-Gurdeep Singh was married and having one son and two daughters besides the widow and the mother. However, the

widow of the deceased was not made as party to the claim petition. Learned counsel has further submitted that since all the legal representatives of the deceased were not made parties, therefore, the claim petition itself was not maintainable. Hence the award deserves to be set aside altogether. Learned counsel has relied upon a judgment rendered by this Court in the case of **Kaushalya Devi and another Vs. Mohan Lal and others, 1985 ACJ 514** to buttress his arguments.

On the other hand, learned counsel for respondent No.1 to 4 has submitted that the factum qua the wife of the deceased was not concealed by them, rather, it was duly brought on record. The same has duly been considered by the Tribunal. Only after considering the entire aspect, the compensation has been awarded only in favour of the claimants, who are the children and the mother of the deceased. Learned counsel has further submitted that even if all the legal representatives are not joined as a party, that could be not a ground for non-suiting the claimants, who have come forward to raise the claim. The wife of the deceased was free to come forward to raise the claim, if at all she was interested. Even respondent-Insurance Company was not precluded from making a prayer before the Tribunal for bringing the said widow as a party-respondent. The said widow had re-married and had deserted the deceased before his death. There is no illegality in the order passed by the Tribunal. Hence, the appeal deserves to be dismissed.

Having heard learned counsel for the parties and pursued the case file, as well as the provisions of the Act, this Court does not find any

substance in the arguments raised by the learned counsel for the appellant. The main argument raised by the learned counsel for the appellant is that the petition itself was not maintainable; in the absence of the wife of the deceased being impleaded as claimant or as respondent to the claim petition. However, this is not the mandate of the Act. Filing of a claim petition is dealt with by Section 166 of the Act, which is reproduced herein-under:-

“166. Application for compensation.- (1) An application for compensation arising out of an accident of the nature specified in sub-section (1) of section 165 may be made-

(a) by the person who has sustained the injury; or

(b) by the owner of the property; or

(c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or

(d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be.

Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application.

[Provided further that where a person accepts compensation under section 164 in accordance with the procedure provided under section 149, his claims petition before the Claims Tribunal shall lapse.]

[(2) Every application under sub-section (1) shall

be made, at the option of the claimant, either to the Claims Tribunal having jurisdiction over the area in which the accident occurred, or to the Claims Tribunal within the local limits of whose jurisdiction the claimant resides or carries on business or within the local limits of whose jurisdiction the defendants resides, and shall be in such form and contain such particulars as may be prescribed:

*[***]*

[(3) No application for compensation shall be entertained unless it is made within six months of the occurrence of the accident.]

[(4) The Claims Tribunal shall treat any report of accidents forwarded to it under [section 159] as an application for compensation under this Act.]

[(5) Notwithstanding anything in this Act or any other law for the time being in force, the right of a person to claim compensation for injury in an accident shall, upon the death of the person injured, survive to his legal representatives, irrespective of whether the cause of death is relatable to or had any nexus with the injury or not.]”

A perusal of the provision of the Act shows that the claim petition for compensation can be filed by all or any of the legal representative(s) of the deceased. It is not even in dispute that the persons who have filed the claim petition in the present case are, actually, the legal representatives of the deceased; as such. Hence, the petition cannot be rejected or held to be non-maintainable only because some other person is not joined as a party to the petition. The claimants, as such, cannot be

denied compensation only because of some other person who might not have come forward to raise a claim.

Although, the first proviso of Section 166 of the Act makes a provision for joining the legal representatives of the deceased who has not come as claimant, as the respondent to the petition, however, even the said omission would not lead the claim petition, as such, being held to be non-maintainable. There is no provision in the Act which mandates that in case some legal representative is not impleaded either as a claim petitioner or as a respondent, then the petition shall not be maintainable. The judgment in case of **Kaushalya Devi** (supra) being relied upon by the learned counsel for the appellant has also not held the claim petition to be non-maintainable; as such, rather, in that case matter was remanded to the Tribunal for fresh adjudication by impleading the widow of the deceased. Otherwise also, the said judgment has also not referred to any provision of the Act. Rather, the said judgment has relied upon another judgment of the Madras High Court, in case of **Ranganathan Vs. K. Gangabai and others, 1982 ACJ 341**, wherein the father of the deceased had filed the claim petition; by ignoring the mother of the deceased. In that situation, the father not being the legal heir of the deceased in the presence of the mother; as a Class-I heir, the petition could not have been maintained in the absence of the mother. Therefore, the non-maintainability involved in that case was not on account of non-impleadment of the legal representative, rather, it was on account of the total absence of any legal heir in the claim petition; despite the mother of the deceased being alive. Accordingly, this Court finds it that the judgment

in case of **Kaushalya Devi** (supra) would not constitute any precedent (on account of there being no provision) for holding the claim petition to be non-maintainable on account of the non-impleadment of one of the legal representatives as respondents to the claim petition. Accordingly the arguments raised by the learned counsel for the appellant qua non-maintainability of the claim petition on account of non-impleadment of the widow of the deceased is rejected.

Moreover, the argument regarding non-impleadment of widow as respondent was specifically raised before the Tribunal. However, since it had come on record that the wife of the deceased had deserted him about eight years prior to his death, therefore, the Tribunal has held her not to be dependent. The Tribunal has also recorded the finding that she had, in fact, re-married. Accordingly the Tribunal has held her not entitled to any compensation in the matter. This Court also does not find any illegality or perversity with the order passed by the Tribunal in this regard. Since the alleged wife had already deserted the deceased before his death and she had re-married, therefore, she was not dependant upon the income of the deceased. Even her status as a legal representative of the deceased is not without doubt on account of her having re-married. Therefore, she is otherwise also not entitled to claim anything in the claim petition in the absence of any evidence to the effect that she was the legal heir of the deceased on the date of the accident. For the said reason also, the argument of the learned counsel for the appellant that the claim petition is not maintainable is found to be unsubstantiated.

Undisputedly, the Section 166 of the Act prescribes that the petition shall be filed on behalf of and for the benefit of all the legal heirs, however, that relates to filing of the petition; as such. After the evidence is led, it is for the Tribunal to apportion the compensation as per the facts and circumstances and the evidence available on record. In this case, the Tribunal has found that the alleged widow of the deceased was not entitled to any compensation. She cannot be held to be entitled to compensation only because at one point of time in the life; the deceased happened to have married her and she had given birth to his children. The status is to be seen as on the date of accident. The said status was duly explained by the claimants in their claim petition. Needless to say that despite the fact that the accident happened in 11.07.2016, till today, the said widow has not come forward to raise her claim. Nor is anything on record that she ever claimed any other right claiming herself as widow of the deceased. This also shows that she does not have the status of a legal representative of the deceased. Otherwise; it is beyond comprehension that the widow would not come to know of the death of her husband for such a long time. Therefore, the assertion of the claimants that she is not the legal representative; is substantiated from this fact; as well. Moreover, if the Insurance Company is filing appeal now claiming non-maintainability of the claim petition for non-impleadment of the alleged widow as party-respondent, it could have very well filed an application before the Tribunal, at the initial stage, for impleading her as respondent. They never did so. Hence the present appeal is only an attempt to deny a part of compensation to the claimants.

In view of the above, the present appeal is dismissed. The appellant is directed to pay the balance amount of the compensation to the claimants who have been held entitled to receive the same by the Tribunal.

All pending miscellaneous application(s), if any, stands disposed of; as such.

(RAJBIR SEHRAWAT)
JUDGE

09.02.2023
adhikari

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No