

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

**FAO 6758/2018(&M) and
Cross Objection No.243/2019
Date of decision: 16 .03.2023**

The New India Assurance Company Limited.

.....Appellant.

Vs.

Smt.Somti Devi and others

**.....Respondents/Cross
Objectors**

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr.Rahul Pathania, Advocate for the appellant-Ins. Co.
Mr. Ashwani Arora, Advocate for respondents 1 to 6/
Claimants/Cross Objectors.
Mr.Hitesh Sood, Advocate for respondents 7 & 8/
Driver and owner of the offending vehicle.

Nidhi Gupta, J.

CM 25581-CII/2019

Since there is delay of 21 days in re-filing the Cross Objections, aforesaid application has been filed seeking condonation of said delay. The application is supported by affidavit dated 3.10.2019 of the counsel for the Cross-Objectors.

For the reasons stated in the application, the application is allowed and delay of 21 days in filing the Cross Objections is condoned.

Main Appeal and Cross Objections:

By this common order I shall dispose of FAO No.6758/2018 filed by the Appellant-Insurance Company; and Cross Objections No. 243 of 2019 filed by the claimants. Both, the Appeal as well as the Cross Objections arise from the Award dated 18.5.2018 passed by the Motor Accident Claims Tribunal, Chandigarh (hereinafter referred to as 'the Ld. Tribunal') in claim petition MACT Case no. 635 of 2017, filed u/s 166 of the Motor Vehicles Act, 1988(hereinafter referred to as 'the Act').

For the sake of convenience, parties are being referred to as per their litigative status in the Appeal filed by the Insurance Company, same being FAO No. 6758 of 2018.

The Ld. Tribunal on appraisal of the facts, pleadings and evidence adduced before it concluded that the deceased Megh Nath aged 78 years, had died due to the injuries suffered by him in a motor vehicular accident that took place on 22.9.2017, due to the rash and negligent driving of the Truck bearing registration No. PB-65N-1781 (hereinafter referred to as 'the offending vehicle') being driven by respondent no.7, and owned by respondent no.8, and insured by the appellant Insurance Company. Claimants are the widow, 3 major sons and 2 major married daughters of the deceased Megh Nath.

The Ld. Tribunal awarded compensation as follows:

Respondent no.1 - Rs. 1,70,000/- being widow of deceased Megh Nath

Respondents no. 2 to 6 – Rs. 2,50,000/- total i.e. Rs.50,000/- each, being 3 major sons and 2 married daughters of deceased Megh Nath, under 'No Fault Liability'

The learned Tribunal calculated the compensation admissible to the claimants in the following manner:-

On the basis of the photocopy of the Aadhar Card of the deceased wherein his year of birth was mentioned as 1939, age of the deceased was determined to be 78 years at time of death. Though the deceased was stated to be an agriculturist and earning Rs. 30,000/- pm, however, as no cogent evidence was led by the claimants in support of said assertion, Id. Tribunal took the notional income of the deceased as Rs.5000/- per month/Rs. 60,000/- per annum. Id. Tribunal deducted 1/3rd income of the deceased towards personal expenses, and annual dependency of the claimants worked out to Rs.20,000/-. The deceased being 78 years, multiplier of 5 was applied and total dependency was worked out to be Rs.1 lac. Claimant no.1-widow of the deceased was awarded Rs.40,000/- towards consortium; Rs.15,000/- was granted on account of loss of estate; and Rs.15,000/- towards transportation, and expenses for funeral and last rites. Thus, as already noticed above, the claimant widow was awarded total compensation of Rs.1.70 lacs; and the other 5 claimants, being 3 major sons and 2 major married daughters, were awarded Rs.50,000/- each under the “No Fault Liability” as envisaged u/s 140 of the Act. Id. Tribunal awarded compensation as above, along with interest @ 7% per annum. Respondents 7 and 8 herein, and appellant were held jointly and severally liable to pay the compensation.

Learned counsel for the appellant Insurance Company assails the Award primarily on the ground that all the claimants are major i.e. widow of the deceased being 74 years old, and the other claimants being 44, 43, 38, 47 and 41 years of age, respectively. It is submitted that in actual fact, it is only claimant no.1/widow of the deceased who is entitled to compensation. It is vehemently submitted that rest of the claimants being major sons and major

married daughters of the deceased, are not entitled to any compensation. It is submitted that though Id. Tribunal has not considered the major and married children of the deceased as dependents yet, has made a deduction of 1/3rd on account of personal expenses which is incorrect, and deduction of 50% ought to have been made. It is further submitted that Rs.50,000/- granted to each of the five major married children under the 'No Fault Liability' is also not admissible. In support, learned counsel for the Appellant-Insurance Company has placed reliance upon judgments rendered by this Court in **Harpal Kaur and others v Sita Ram and others, Law Finder Doc Id # 921104; Narender Nayyar v Sheodan Singh and others, Law Finder doc Id # 626136; and Sajna Devi and others v Vijender Kumar and others, Law Finder Doc Id # 921100**, wherein it has been held that deduction of 50% of income of the deceased therein, towards personal expenses was rightly made as, the only dependent is widow, and major sons are not entitled to any compensation.

Per contra, it is vehemently submitted by the learned counsel for the claimants/ cross-objectors that the Tribunal was in error in taking the income of the deceased as only Rs.5000/- per month as, it had been proved on record that the deceased was agriculturist. It is submitted that the deceased was earning Rs. 30,000/- per month as an agriculturist, and owned 5 acres of land. It is stated that at least, notional income of the deceased could be assessed at a minimum of Rs. 9300/- per month on the basis of relevant Minimum Wages Notification of that time.

It is further submitted that under Section 166 of the Act an application for compensation may be made by any or all of the 'Legal Representatives' of the deceased and therefore, the Legal Representatives have to be seen and not 'dependents'. It is submitted that in various Acts, Legal Representatives have been defined as those who represent the estate. It is

submitted that though the term 'Legal Representatives' has not been defined under the Act however, as per Section 1(a) of the Fatal Accidents Act, 1901, and Section 2(11) of Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC'), 'Legal Representative' is one who represents the estate of the deceased. It is further submitted that in any event, Memo of Parties reveals that the claimants were residing with the deceased, and therefore, even their dependency upon the deceased is established. It is submitted that accordingly, claimants 2 to 6 are entitled to compensation.

It is further submitted that keeping in view the fact that Legal Representatives/claimants in the present case are 6 in number, a deduction of 1/4th ought to have been made on account of personal expenses; and Rs.40,000/- ought to have been granted to each of the 6 claimants towards loss of consortium; and Rs.16,500/- each on account of funeral expenses, and loss of estate. It is further submitted that the judgments relied upon by the appellant Insurance Company are not in accordance with the law laid down by the Hon'ble Supreme Court in this regard. In support, Id. counsel relies upon judgment of the Hon'ble Supreme Court in **National Insurance Co. Ltd. V Birender and others, 2020 ACJ 759**; and **Panwati v Pawan Kumar (P&H) Law Finder doc Id # 2004800**; **FAO 2879/2013 titled Shri Ram General Insurance Co. Ltd. V Veena Chadha and others**, decided by this Court on 15.1.2014; **FAO 7142/2016, New India Assurance Co. Ltd. V Gurdev Kaur and others, FAO 7142/2016** decided by this Court on 19.12.2022; **National Insurance Co. Ltd. V Kamlesh Kumari & ors, 2021 ACJ 1589**; and **Ranjana Prakash and others v Divisional Manager New India Assurance Co. Ltd., 2011 ACJ 2418**.

Heard Ld. Counsel for the parties.

It is the pleaded case of the claimants that the deceased owned 5 acres of agricultural land and was earning an amount of Rs.30,000/- per month from the said land. Claimants had produced jamabandis Ex.P-9 and Ex.P-10 in support of their claim. However, no substantial evidence was placed on record by the claimants to prove that the monthly income of the deceased was Rs.30,000/-. Accordingly, Learned Tribunal had assessed the notional income of the deceased to be Rs.5000/- per month towards his managerial skills. It is established position in law that income from agriculture is not taken into consideration while assessing income for purposes of computing compensation payable to claimants as, upon death of the deceased claimants are not deprived of the agricultural land and therefore, income from said land continues even after death of the deceased. In other words, there is no loss of income from agriculture, or even dairy farming. However, in absence of cogent evidence with regard to income of the deceased, the same ought to have been taken as per the relevant Minimum Wage Notification. Ld. Counsel for the claimants has produced Minimum Wage Notification dated 11.10.2017 issued by Punjab Govt. as per which minimum wage admissible to skilled labourer w.e.f. 1.9.2017 is Rs. 9300/-. Accordingly, notional income of the deceased is taken as Rs. 9300/- per month.

As regards argument of the Id. Counsel for the claimants to the effect that claimants number 2 to 6, despite being major, married, settled sons and daughters of the deceased were entitled to compensation, same is not tenable in view of judgment of the Hon'ble Supreme Court in **New India Assurance Co. Ltd. Versus Vinish Jain and Ors., Law Finder Doc Id # 977386**, wherein it has been categorically held that major children being not dependent on the deceased are not entitled to compensation. In the said case too, the deceased therein was 78 years old and claimants were major sons and

granddaughters of the deceased. Hon'ble Supreme Court held therein as follows:

“7. This case relates to death of one A.P. Jain. He was 78 years of age. At the time of death, his annual income was assessed at L 3,64,500/-. The deduction made for personal expenses at 1/3 is very low keeping in view the fact that the claimants are his two major sons and two granddaughters. The major sons have their own source of income and were not dependent on the deceased and the two granddaughters are primarily dependent on their father and not on their grandfather. We are also of the view that the High Court has erred in granting L 50,000/- as loss of love and affection to each of the claimants. The total compensation granted is L 14,39,980/- along with interest at the rate of 7.5% per annum.

8. We feel that 50% deduction is called for and if this factor is taken into consideration, then the loss of dependency is L 1,82,250/- and if multiplier of 5 is used, the compensation works out to L 9,11,250/-. In addition, the claimants would be entitled to L 70,000/- for love and affection and funeral expenses etc. as per the judgment of this Court passed in the case of Pranay Sethi (supra). Accordingly, the amount of compensation is reduced to L 9,81,250/- along with interest awarded by the Tribunal”.

Admittedly, in present case too, claimants no. 2 to 6 are major sons and daughters of the deceased, aged 44, 43, 38, 47 and 41 years respectively. Even in the present case, the said claimants are not dependent on the deceased. PW-1, Gomti Devi, claimant no.1 has admitted in her cross-examination that claimants no. 2 to 4 were doing labour work. Claimants no. 5 and 6 are admittedly, married daughters of the deceased who are happily settled in their matrimonial homes. No evidence whatsoever has been led by the

claimants no. 2 to 6 to show that they were dependent on the deceased. In this scenario, I find no error in the reasoning of the Id. Tribunal that claimant no. 1 being widow of the deceased was the sole claimant dependent on the deceased and was therefore, the sole claimant entitled to compensation.

As regards reliance placed by Id. Counsel for the claimants upon judgment of the Hon'ble Supreme Court in case of **Birender** (supra), in my most respectful view, the same is distinguishable as in the said case, it was found that *"The evidence on record in the present case would suggest that claimants were working as agricultural labourers on contract basis and were earning meager income between Rs. 1,00,000 and Rs. 1,50,000 per annum. In that sense, they were largely dependent on the earnings of their mother and, in fact, were staying with her, who met with an accident at the young age of 48 years"*.

It is the considered view of this Court that, compensation has to be awarded keeping in view the facts and circumstances of each case. 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. Claimants no. 2 to 4 herein are joint owners of 8 acres of land inherited from the deceased, whereas claimants no. 5 and 6 are married daughters of the deceased who are happily residing in their matrimonial homes. As already noticed above, the testimony of PW1, Smt. Gomti Devi to the effect that the claimants/ respondents no. 2-4/ major sons of the deceased, are doing labour work, remains uncontroverted. Moreover, in the present case the deceased was 78 years of age at time of death and likely dependent on claimants 2 to 4 instead of the other way around. Moreover, unlike the relied upon case, the deceased herein is stated to have had an income of Rs.

3,60,000/- per annum. Thus, in the facts and circumstances of the present case, in my view, claimants no. 2 to 6 were correctly, held not entitled to compensation as they were not shown to be dependent on the deceased.

As regards argument of the Id. Counsel for the claimants that u/s 166 of the Act, claimants were entitled to compensation. S. 166 of the Act is reproduced hereinbelow:

“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 defendant resides, and shall be in such form and contain such particulars as may be prescribed:[***]]*

No doubt as per S. 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 S. 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 MV 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 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.”

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 v VJ. Cyrice, 2003 (1) TAC 266 (AP)**. In the present case, there is no averment anywhere in the cross-objections, nor any evidence, either oral or documentary to reveal that any of the claimants no. 2 to 6 were dependent upon the deceased who was aged 78 years. Thus, after taking into consideration all the facts and the position of law, this Court is of the definite opinion that in such a case as the present one, where there is neither any pleading nor any evidence to reveal that claimants were either dependent on their father or were enjoying any pecuniary benefits out of his earnings, Id. Tribunal was correct in holding that no compensation can be awarded to claimants no. 2 to 6 under the head of loss of dependency. Accordingly, a deduction of 50% is to be made towards personal expenses of the deceased.

This Court considers it imperative that it need be said that compensation upon the death of a near and dear one has been reduced to a market negotiation, where every penny is sought to be drawn. It does not appeal to the judicial conscience of this Court that grown men who are sustaining their own families, claim to be entirely dependent on the earnings of their aged deceased father, just to get the compensation. Compensation awarded under the MV Act is not a bonanza, but the Act merely attempts to compensate families for the loss of a person whose death is the result of the wrongful act, negligence or default of another. It needs be noted that the Act itself makes no specific provision in this regard. Concept of compensation has evolved by way of judicial pronouncements, and the said law / concept has been given expression and meaning to hold that a reasonable, just, and fair, quantum of compensation be awarded. No doubt, it is beneficial legislation and the claimants need to be considered for fair compensation, but, at the same time it cannot be treated as a bonanza and the insurance company cannot be penalized with an exorbitant amount in favour of the claimants. To do so, belies all sense of rationality, equity and fair play.

Having said that, claimants/ children cannot be deprived of compensation towards loss of love and affection and suffering on the death of a beloved parent. Parental consortium of Rs. 40,000/- is granted to the child upon the 'premature' death of a parent, for loss of parental aid, protection, affection, society, discipline, guidance and training. This is in conformity with judgment of the Hon'ble Supreme Court in case of **Vinish Jain (supra)**. In the present case, Id. Tribunal has instead granted Rs. 50,000/- each u/s 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)**.

At the risk of repetition, it is reiterated that no doubt Chapter-12 of the Motor Vehicles Act, 1988 is a beneficial legislation yet, as cautioned by the Hon’ble Supreme Court, the same cannot be allowed to be treated as a windfall or a source of profit. All that has to be determined in the facts of a given case is, that the compensation accorded is ‘just’. In case of *KSRTC Versus Susamma Thomas 1994 Volume-II SCC 176*, the Hon’ble Supreme Court has held that misplaced sympathy, generosity and benevolence cannot be the guiding factor for determining the compensation.

Accordingly, following from the above discussion, compensation admissible to claimant no. 1 is re-worked as follows:

Sr. No.	Head	Amount (In rupees)
1	Income	9300/-
2	50% deduction for personal expenses	4650/-
3	Annual income	4650x12= 55,800/-
4	Multiplier 5	55,800x5=2,79,000/-
5	Loss of Estate	15,000/-
6.	Funeral Expenses	15,000/-
7	Total	3,09,000/-
8	Already granted by Tribunal	1,70,000/-
9.	Enhancement	1,39,000/-

Claimant no. 1 shall further be entitled to Interest at the rate of 6% on enhanced compensation from date of filing claim petition till realization.

For the reasons stated above, the appeal filed by the Insurance Company stands partly allowed; and the Cross Objections filed by the claimants also stand partly allowed.

Pending application(s), if any, stand disposed of.

(Nidhi Gupta)
Judge

16 .03.2023
Joshi

Whether speaking/reasoned	Yes
Whether reportable	Yes/No