



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

F.A.O No. 4742 of 2006 (O&M)

Date of decision:- 10.05.2024

Veena and others

...Appellants

Versus

National Insurance Co. Ltd. and ors.

...Respondents

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present:- Mr. Rajeev Dev Sharma, Advocate
for the appellant.

Mr. Aseem Aggarwal, Advocate
for respondent No. 1-Insurance Co.

Mr. Manish Jain, Mr. Sidhhant Jain and
Mr. Manan Jain, Advocates
for respondent No. 3

SUDEEPTI SHARMA, J. (Oral)

1. The present appeal has been preferred by the appellants, against award dated 16.01.2006 passed by the learned Motor Accident Claims Tribunal, Gurdaspur (for short, 'the Tribunal') under Section 166 of the Motor Vehicles Act, 1989, whereby the claim petition filed by the claimants/appellants was dismissed.

FACTS NOT IN DISPUTE

2. On 30.08.2003 at about 4:55 PM, deceased-Raju alias Raj Kumar was coming from Mata Nagni Devi near Nurpur to Pathankot on an auto-rickshaw bearing No. PB-06-B-1647 and when the said auto-rickshaw



reached near Raja Ka Bagh, village Chatrol, a truck/oil tanker bearing registration No. HP-37-9627 came from Pathnkot-Kandwal barrier side at a very fast speed, rashly, negligently and without blowing any horn, collided the same into the aforesaid auto-rickshaw by going extreme wrong side of the road. The driver of the offending tanker lost control on it, as the same was on a very high speed and it struck with one scooter as well, bearing No. PB-35-E-0328 having two riders. They were also crushed under the offending tanker. The accident was witnessed by Shankar Dass on whose statement, F.I.R No. 260 dated 30.08.2003 was registered under Sections 337/279/304-A of IPC, at police station Nurpur. The deceased-Raju alias Raj Kumar received injuries in the accident and succumbed to his injuries. His post mortem was conducted at Civil Hospital, Nurpur.

3. On notice of the claim petition, respondent No. 1 filed written statement and resisted the claim petition and took a preliminary objection that the claimants have no *locus standi* to file the present claim petition, as they were not dependent upon the deceased nor they were admitted to be the legal heirs of the deceased; that Narinder (driver of the offending tanker) was not holding a valid and effective driving licence at the time of alleged accident. Respondent No. 3 filed separate written statement and took a preliminary objection that the petition is not maintainable in the present form nor the claimants have any enforceable cause of action against the answering respondent and the same is also bad for non-joinder of necessary parties.

4. From the pleadings of the parties, the Tribunal framed the following issues:-

1. *Whether on 30.08.2003, Narinder Kumar-respondent No.*



2 was driving the truck bearing registration No. HP-37-9627 in a rash and negligent manner and struck against auto rickshaw in which deceased Raj Kumar was sitting and he was crushed under the truck and died at the spot? OPA

2. Whether the claimants are entitled to compensation, if so to what extent and from whom ? OPA

3. Whether Narinder Kumar-respondent No. 2 was not holding a valid driving license at the time of accident.

4. Relief.”

5. The learned Tribunal decided issue No. 1 and 2 against the appellants and in favour of the respondents and issue No. 3 was decided against the respondent as not pressed.

6. The learned counsel for the claimants-appellants contends that the learned Tribunal has erred in law in dismissing the claim petition of the appellants/claimants on the ground that the appellants are not dependent upon the deceased-Raju alias Raj Kumar. He further contends that the claimants are sister in law, niece and nephew of the deceased, therefore, they are entitled for the compensation.

7. To give force to his contention, learned counsel for the appellants has placed reliance on the judgment of Gujarat High Court in a case of *New India Assurance Co Ltd vs. Ashwin Vrajlal Rajgor and others*, 2005 (16) RCR (Civil) 889 wherein in para No. 5, it has been observed as under-

5. In the Hindu Succession Act, 1956, brothers' son is class II heir. Therefore, the petition is maintainable, claimants being legal representatives/heirs of the deceased within the meaning of Section 166/163-A of the Act. Deceased was bachelor and left no other heir/representative in class I to represent him in



his estate, except the claimants, according to learned counsel for the claimants.

8. Learned counsel for the appellants has further relied upon judgment of Gujarat High Court in a case of **Meghjibhai Khimji Vira and another vs. Chaturbhai Taljabhai and others**, 1997 AIR (Gujarat) 1954, wherein in para No. 11-A, it has been observed as under-

“11-A. There cannot be any gainsaying that the 1939 Act makes provision for the constitution of the Claims Tribunal to provide a Cheap and speedy mode of enforcing liability arising out of the use of motor vehicles. It is a benevolent legislation which calls for liberal and broad interpretation so that the real purpose underlying the enactment of Ss. 110 to 110-F is achieved and full effect is given to the legislative intent. It is well settled that if while interpreting a welfare legislation any provision of the Act is capable of two constructions, that construction should be preferred which furthers the policy of the Act and is more beneficial to the class in whose interest the law has been made. The contention that the group of Ss. 110 to 110-F merely lays down the procedure and powers of the Tribunal and do not deal with liability at all, in other words, they are merely adjectival or procedural in nature, does not seem to be wholly correct. The first para. of [S. 1A](#) of the 1855 Act, no doubt, has the effect of nullifying the principle contained in the maxim 'actio personalis moritur cum persona'. The second para. of that section merely provides that every action or suit shall be brought for the benefit of the wife, husband, parent and child, if any, of the person whose death shall have been so caused. The 1939 Act makes an inroad in so far as the second para. of [S. 1A](#) of the 1855 Act is concerned, in that S. 110-A thereof provides that an application for compensation arising out of an accident of the nature specified in sub-s. (1) of S. 110, may be made where the death has



resulted 'from the accident by all or any of the legal representatives of the deceased. The proviso says that if all the legal representatives of the deceased do not join in the application, the application shall be made " on behalf of or for the benefit of all the legal representatives of the deceased". it is, therefore, clear on a plain reading of S. 110-A of the 1939 Act that the right to apply for compensation where death has resulted from the accident, is conferred on all the legal representatives of the deceased. If para. 2 of [S. 1A](#) of the 1855 Act is a substantive provision, as was contended before us by Mr. Majmudar we fail to understand why Cl (b) of sub-s. (1) of S. 110-A, which confers a right on the legal representatives of the deceased to claim compensation, cannot be termed to be a substantive provision. The 1939 Act is undoubtedly a special legislation dealing with accidents arising out of the use of motor vehicles. According to the cardinal rule of construction, a particular or special rule must control or cut down the general rule ([Bengal Immunity Co. Ltd. v. State of Bihar](#), AIR 1955 SC 661). We have, therefore, no doubt in our minds that Clause (b) of sub-s. (1) of Section 110-A of the 1939 Act is a substantive provision which confers a right on all the legal representatives of the deceased victim of a tortious act to claim compensation from the wrong-doer, and being a special provision dealing with accidents arising out of the use of motor vehicles, it has the effect of overriding para. 2 of [S. 1A](#) of the 1855 Act”.

9. Reliance has further been made to a judgment of Hon'ble the Supreme Court of India in a case of ***Gujarat State Road Transport Corporation, Ahmedabad vs. Ramanbhai Prabhatbhai and another***, 1987 (1) ACC 475, wherein in para No. 15, it has been observed as under-

15. Before concluding we may add that although the Act was extensively modified after the receipt of the report of the Law Commission, Parliament did not choose to amend [section 110-](#)



A of the Act by defining the expression 'legal representatives' in relation to claims under Chapter VIII of the Act as 'the spouse, parent and children of the deceased' as recommended by the Law Commission. The Law Commission had observed in its 85th report that it would be appropriate to assign to the expression 'legal representative' the same meaning as had been given to the expression 'representative' for the purposes of the Fatal Accidents Act, 1855 and that would effectively carry-out the purpose of social justice underlying Chapter VIII of the Act, to which the Fatal Accidents Act, 1855 was the nearest approximation. This recommendation was made after referring to the divergent views expressed by the various High Courts on the meaning of the expression 'legal representatives' in section 110-A of the Act. The fact that Parliament declined to take any action on the recommendation of the Law Commission of India suggests that Parliament intended that the expression 'legal representatives' in section 110-A of the Act should be given a wider meaning and it should not be confined to the spouse, parent and children of the deceased”.

10. Per contra, learned counsel for respondent No. 1-Insurance Company contends that since the claimants are wife and children of elder brother of the deceased, therefore, they are not liable for any compensation. He has relied upon judgment of Hon’ble the Supreme Court of India in a case of ***The New India Assurance Co. Ltd vs. Anand Pal and others***, passed in Civil Appeal No. 7920-2023, decided on 04.12.2023.

11. I have heard learned counsel for the parties and perused the record.

12. The short point for consideration in the present appeal would be as to whether the appellants, who are sister-in-law (Bhabhi) and nephew and neice of the deceased are entitled for grant of compensation, on account of

death of Raju alias Raj Kumar (since deceased) in a road accident?

13. Reference at the very outset can be made to *Anand Pal ‘s case (supra)*, wherein Hon’ble the Supreme Court in para No. 7 has observed as under:-

“7. On the above, it is necessary for us to be conscious that there are two family registers. This would indicate that the victim resided separately as was noted by the Motor Accident Claims Tribunal. The siblings of the victim were older and were married with their own respective families. In these circumstances, they being dependent on the victim’s earnings is unlikely particularly when the victim resided separately.”

14. In the present case, the deceased was 29 years of age at the time of accident. A bare perusal of the record shows that the family of the elder brother i.e appellants/claimants was not dependent upon the deceased and the legal representatives of the deceased can move application for compensation under Section 166 of the Motor Vehicles Act and can also be entitled for the same, but it depends upon the facts and circumstances of each case. In the present case, the claimants could not be entitled for compensation.

16. In view of the above factual position, no ground is made out to interfere in the award dated 16.01.2006 passed by the learned Tribunal.

17. Accordingly, the present appeal is dismissed.

18. Pending application(s), if any, also stands disposed of.

10.05.2024
G Arora

(SUDEEPTI SHARMA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No