



2025:DHC:10153



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Decided on: 17.11.2025+ **MAC.APP. 640/2025****THE NEW INDIA ASSURANCE CO. LTD**AppellantThrough: **Mr. Dharmendra Sharma and Mr. Bhupender, Advocates.**

versus

BINDU DEVI AND ORS

.....Respondents

Through: **Mr. Omkar Kushwaha, Advocate.****CORAM:****HON'BLE MR. JUSTICE PRATEEK JALAN****PRATEEK JALAN, J. (ORAL)****CM APPL. 61511/2025 (for exemption)**

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

MAC.APP. 640/2025 & CM APPL. 61512/2025 (for stay)

3. The appellant- New India Assurance Co. Ltd. ["Insurance Company"] is in appeal against an award of the Motor Accident Claims Tribunal ["the Tribunal"] dated 05.08.2025 in MAC Petition No. 203/2020.
4. The claim is based upon an accident which took place on 08.07.2020 in front of Triveni Colony, Bakhtawarpur Road, Delhi. The accident was between a truck [bearing registration No. DL-1LW-9617] ["the insured vehicle"] and a rickshaw of one Sh. Ganesh Yadav. The accident resulted in the death of Sh. Ganesh Yadav, who was then aged about 52 years.



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5. The claim was instituted by the respondents Nos. 1 to 4 herein, being the wife, two sons and daughter of the deceased.

6. Having returned a finding of rash and negligent driving by the driver of the insured vehicle, the Tribunal awarded a sum of Rs. 18,97,000/-, in favour of the claimants, alongwith 7.5% interest per annum.

7. The Insurance Company has urged the following two grounds in support of this appeal:

- a) That the Tribunal has erroneously considered minimum wages applicable in Delhi while computing compensation, whereas the deceased was admittedly a permanent resident of Bihar.
- b) That the Tribunal has erroneously considered the two major married sons of the deceased as dependants, and thus, computed the deduction for personal and living expenses of the deceased at $1/4^{\text{th}}$ [on the basis of 4 dependants], instead of $1/3^{\text{rd}}$ [on the basis of the dependency of only the wife and daughter].

8. I have heard Mr. Dharmendra Sharma, learned counsel for the appellant-Insurance Company, and Mr. Omkar Kushwaha, learned counsel for the respondent Nos. 1 to 4- claimants, on both the above questions.

A. Applicability of the minimum wages in the State of Delhi

9. Mr. Sharma points out that the addresses of the claimants were all stated to be in the State of Bihar. He submits that no evidence was led as to the deceased residing or working in Delhi.

10. Mr. Kushwaha, on the other hand, relies on the affidavit in evidence of the wife of the deceased, which states that the deceased was working as a rickshaw puller in Alipur area of Delhi. He further submits that the deponent was cross-examined by the Insurance Company, but there was no cross



examination on this aspect. A copy of the affidavit in evidence, along with the cross-examination, is handed up in Court, and is taken on record.

11. The contention of Mr. Sharma is, in my view, untenable. The accident admittedly occurred while the deceased was plying his rickshaw in Delhi. While considering the minimum wages to be applied, the Court must take account of the evidence to determine whether the deceased was, in fact, living and working within Delhi. In a case such as the present, where the deceased was a rickshaw puller, it cannot be concluded that he was not a resident in Delhi, merely because of lack of documentary evidence. The oral evidence of his wife was to this effect; most significantly, the accident itself took place while he was plying rickshaw in Delhi.

12. It may be noted that the Tribunal disbelieved the claimants' claim of income of the deceased to the tune of Rs.1,000/- per day, and instead applied the minimum wages of an unskilled worker applicable to the State of Delhi. Having regard to the evidence, I do not find any infirmity in this conclusion.

B. Deduction on account of personal living expenses

13. The determination of this question turns on the finding of dependency as far as the major sons of the deceased are concerned.

14. The affidavit of evidence of the wife of the deceased in this regard stated as follows:-

"4. I say that my husband left behind myself Smt Bindu Devi (Wife of Deceased) (Age-42 years) Abhinandan Yadav (Son of Deceased) (Age-28 years) Smt. Niwas Yadav (Son of Deceased) (Age- 24 years) Sarita Kumari (Daughter of Deceased) (Age- 21 years) who are the only legal heirs. The entire life of the petitioners has become dark and gloomy. There is sadness in the family of the petitioners. The losses suffered by the petitioners are quite irreparable and no amount can compensate the losses suffered by the petitioners. The petitioners have suffered a great mental pain, shock and trauma.

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7. I say that my husband used to pay his entire earning to me for household expenses. We were fully dependent on the income of the deceased and have no any other source of income.”

15. In her cross-examination by the Insurance company, however, she deposed as follows:-

“I am not an eye witness to the incident. My son Abhinandan is working as a Labour. He earns Rs.400/- daily. Abhinandan is married. My another son namely Niwas Yadav is also working as a Labour and he also earns Rs.400/- daily. Niwas is also married. My daughter namely Sarita Kumari is unmarried.”

16. The evidence, therefore, establishes that the two sons of the deceased were married and had attained majority. They were also earning Rs.400/- each per day, as labourers. However, the question which arises is whether this dis-entitles them to be counted as dependents of their late father. In this regard, reference may be made to the judgment of the Supreme Court in *National Insurance Company Limited vs. Birender and Ors.*¹ wherein the Supreme Court noted its earlier judgment in *Manjuri Bera vs. Oriental Insurance Company Ltd.*², and held as follows:

*“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 dependent on the deceased, would be still covered by the expression “legal representative” of the deceased.** This Court in Manjuri Bera had expounded that liability to pay compensation under the Act does not cease because of absence of dependency of the legal representative concerned. Notably, the expression “legal representative” has not been defined in the Act. In Manjuri Bera, the Court observed thus: (SCC pp. 647-48, paras 9-12)*

“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

¹ (2020) 11 SCC 356 [hereinafter, “Birender”].

² (2007) 10 SCC 643.



compensation and any such legal representative can file a claim petition. The proviso to said sub-section 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*, while advertent 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 S.H. Kapadia, J., 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 Respondents 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 legal representative concerned was fully dependent 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 dependent 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.”³

17. These principles have been noticed, *inter alia*, by the Kerala High Court in *United India Insurance Company Ltd. vs. Shalumol*⁴, by the Karnataka High Court in *Reliance General Insurance Company Ltd, vs Gangappa*⁵, and by a coordinate Bench of this Court in *Ram Charan and*

³ Emphasis supplied.

⁴ 2021 SCC OnLine Ker 3209.

⁵ 2022 SCC OnLine Kar 1801.



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*Others vs. New India Assurance Company Ltd. & Ors.*⁶.

18. It is therefore, by no means, a hard and fast rule that major married sons of the deceased can have no claim for compensation arising out of dependency.

19. In the present case, although, the two sons of the deceased were also earning, the judgment in *Birender* specifically deals with the case of a major married son who was also earning and not fully dependent on the deceased, holding that he would also be covered by the expression “*legal representatives*” of the deceased.

20. The aforesaid ground also, therefore, does not commend to me.

C. Conclusion

21. For the reasons aforesaid, I do not find merit in either of the two arguments raised on behalf of the appellant. No other ground has been argued in support of this appeal. The appeal is, therefore, dismissed.

22. The statutory deposit of Rs. 25,000/- be refunded to the appellant.

PRATEEK JALAN, J

NOVEMBER 17, 2025

Dy/AD/

⁶ 2022 SCC OnLine Del 5146.