

M/s The New India Assurance Company Limited Vs Kiran Kumari

Court: Jharkhand High Court

Date of Decision: Feb. 12, 2025

Acts Referred: Code of Civil Procedure, 1908 " Section 2(11)
Motor Vehicles Act, 1988 " Section 166, 166(1), 166(1)(C)

Hon'ble Judges: Sanjay Kumar Dwivedi, J

Bench: Single Bench

Advocate: Amresh Kumar, Nikhil Ranjan

Final Decision: Dismissed

Judgement

Sanjay Kumar Dwivedi, J

1. Heard learned counsel appearing for the appellant-insurance company and learned counsel appearing for the respondent Nos. 1 to 4, who are the

claimants.

2. Respondent No. 5 is the owner of the vehicle in question and notice upon him has been validly served, in spite of that he has chosen not to appear in

the case.

3. The Trial Court Records has already been received in the matter.

4. This appeal is preferred against the judgment / award dated 19.09.2022, passed in Motor Accident Claim Case No. 77 of 2019, by the learned

District-Judge-I-cum-P.O. Motor Vehicle Accident Claims Tribunal, Bokaro.

5. Mr. Amresh Kumar, learned counsel appearing for the appellant-insurance company submits that the claimants instituted the compensation claim

case under Section 166 of the Motor Vehicles Act, 1988 for compensation of Rs. 1,35,90,000/- on account of death of Rajendra Yadav S/o Late Ram

Chandra Yadav in a motor vehicle accident involving a Vehicle (Bus) bearing Registration No. JH-02-Z-4748. He submits that Claimant Nos. 1, 3 and

4 are daughters and Claimant No. 2 is minor son of the deceased and Claimant No. 2 is minor and represented through his legal guardian and sister

Kiran Kumari. He further submits that in the claim case, it has been alleged that on 09.05.2019, the deceased Rajendra Yadav was travelling by

Tempo bearing registration number-JH-24-C-6884 and when reached near Main Road, Nai Sarai, in left side of the road, in the meantime one Bus

bearing Registration No. JH-02-Z-4748 coming from back side being driven rashly and negligently dashed the said Tempo due to which deceased

Rajendra Yadav sustained grievous injury. He then submits that thereafter, with the help of people, he was brought to Sadar Hospital but in the way to

hospital Rajendra Yadav died. He submits that the deceased left three daughters and one minor son and all were dependent on the income of

deceased and after death of the deceased they are hand to mouth.

6. Learned counsel appearing for the appellant submits that on the above backgrounds, the claim case was filed. He further submits that the learned

Tribunal has been pleased to award Rs. 1,08,78,148/-along with interest @ 7.5% per annum from the date of institution of the case i.e. from

08.07.2019 till the date of final realization. He submits that respondent Nos. 2 and 3 are not the dependents and they are married sisters, in view of

that deduction is not properly made, as such, the award may kindly be modified.

7. On the other hand, Mr. Nikhil Ranjan, learned counsel appearing for the respondent Nos. 1 to 4, who are the claimants by way of drawing the

attention of the court to Section 166 of the Motor Vehicles Act submits that legal representative can file the claim case. He submits that even before

the learned tribunal, the said ground has not been argued and in the written statement also, this point has not been taken by the insurance company. He

relied in the case of National Insurance Company Limited Versus Birender & Ors. reported in (2020) 11 SCC 356, where in paras-12 and 14, the

Hon'ble Supreme Court has 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 [Manjuri Bera v. Oriental Insurance Co. Ltd., (2007) 10 SCC 643 : (2008) 1 SCC (Cri) 585] 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 [Manjuri Bera v. Oriental Insurance Co. Ltd., (2007) 10 SCC 643 : (2008) 1 SCC (Cri) 585] , 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

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 [Manjuri Bera v. Oriental Insurance Co. Ltd., 2003 SCC OnLine Cal 523 : (2004) 2 CHN 370] 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 [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 [Gujarat SRTC v. Ramanbhai Prabhatbhai, (1987) 3 SCC 234 : 1987 SCC (Cri) 482] 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.

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.

8. Relying on the above judgment, learned counsel appearing for the claimants submits that there is no illegality in the impugned order.

9. In view of the above submissions of learned counsel appearing for the parties, the court has gone through the materials on record including the trial

court records. On perusal of the written statement filed by the insurance company, it transpires that the said ground, which has been argued by the

learned counsel appearing for the appellant-insurance company has not been taken and on that point also, the evidence has not been led.

10. The Motor Vehicle Act, 1988 does not define the expression legal representative in Section 166 of the said Act or in any defining sub-section of

Section 2 of that Act, therefore, the definition of legal representative has to be read provided in Section 2(11) of CPC. Thus, a person 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, would be the legal

heirs of the deceased within the meaning of Motor Vehicles Act.

11. In the case of National Insurance Company Limited (Supra), as relied by the learned counsel appearing for the respondent Nos. 1 to 4, Section

166(1)(C) of the Motor Vehicles Act has been considered and the legal representative has been answered in paras-12 and 14 of the said judgment,

which is already quoted hereinabove and the point, as argued by the learned counsel appearing for the appellant-insurance company has been

answered.

12. In view of the above, there is no illegality in the award passed by the learned tribunal and only point has been argued with regard to the

dependency, has already been answered as above, as such, this appeal is dismissed.

13. Let the Trial Court Records be sent back to the learned court forthwith.

14. The statutory amount, deposited by the insurance company, is directed to be transmitted back to the learned court and that will be utilized in

satisfying the award in favour of the claimants.