

(2011) 07 DEL CK 0441

Delhi High Court

Case No: MAC App. No. 326 of 2010

Budh Singh

APPELLANT

Vs

Vijender Singh and Others

RESPONDENT

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**Date of Decision:** July 19, 2011**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Section 2(11)
- Motor Vehicles Act, 1988 - Section 166(1)

**Citation:** (2013) ACJ 19**Hon'ble Judges:** Reva Khetrapal, J**Bench:** Single Bench**Advocate:** Navneet Goyal, for the Appellant; Neerja Sachdeva, for the Respondent

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**Judgement**

Reva Khetrapal, J.

By way of this appeal, the Appellants seek to assail the judgment and award of the Motor Accident Claims Tribunal dated 06.03.2010.

2. The brief facts leading to the filing of the appeal are as follows:

On 04.10.2007 the deceased was travelling in tempo No. HR-69-4806. When the said tempo reached G.T.K. Road, Singhu Border, the driver of the tempo halted his vehicle behind a stationary truck at the toll gate. In the meanwhile, a truck bearing No. HR-38-E-9293 driven by its driver at a very high speed, in a rash and negligent manner, came from the back side and hit the stationary tempo. As a result of the forceful impact, the said tempo got sandwiched between the truck standing ahead of it and truck No. HR-38-E-9293. The deceased sustained injuries all over his body to which he succumbed on 10.10.2007. A claim petition claiming compensation of Rs. 20 lakhs alongwith interest at the rate of 18% per annum was filed by the mother and father of the deceased before the Motor Accident Claims Tribunal, Rohini, Delhi, against the driver, the owner and the insurer of the offending vehicle i.e., the truck No. HR-38-E-9293, being the Respondents No. 1, 2 and 3 herein.

3. By an order dated 02.09.2008, the learned Tribunal awarded an interim compensation of Rs. 50,000/-, that is, Rs. 25,000/- each to the mother and father of the deceased. The mother of the deceased died during the pendency of the proceedings and her name was deleted from the array of parties. By its judgment and award dated 06.03.2010, the learned Tribunal by adopting the following process of reasoning held that the aforesaid amount of Rs. 50,000/- paid to the claimants as interim compensation, was just and reasonable compensation.

4. The learned Tribunal noted that the mother of the deceased had expired in July 2008, i.e. after about 9 months from the accidental death of the deceased. It further noted that in his testimony PW1, the father of the deceased, had stated that he was working as a peon with the State Bank of Patiala and was earning around Rs. 10,000/- per month, and that he had three sons besides the deceased, all of whom were older to the deceased. The learned Tribunal, thus, came to a conclusion that the father of the deceased was not dependent upon the deceased and was entitled only to compensation for the loss of love and affection and support from the deceased or at the most towards the loss of estate of the deceased. The father of deceased was not entitled to compensation on account of loss of dependency. The mother of the deceased was entitled to compensation during her life time for loss of dependency, which was for a period of nine months only. Accordingly, the interim compensation granted by the order dated 02.09.2008 to the extent of Rs. 50,000/-, that is, Rs. 25,000/- to each of the parents of the deceased, was held to be just and reasonable compensation.

5. In arriving at the aforesaid conclusion, the Tribunal relied upon the following observations made by the Supreme Court in the case of [Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another](#),

Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent/s and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependent. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependents, because they will either be independent and earning, or married, or be dependant on the father. Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where family of the bachelor is large and dependant on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal

and living expenses may be restricted to one-third and contribution to the family will be taken as two-third.

6. Aggrieved by the aforesaid award, the Appellant who is the father of the deceased has preferred the present appeal.

7. Mr. Navneet Goyal, the learned Counsel for the Appellant, contended that the mother of the deceased was alive at the time of the accident and the amount of compensation fell due on the date of the accident when the cause of action accrued. After the death of the mother, the compensation to which she was entitled devolved upon her legal representatives. He further contended that a claim petition does not abate if the mother of the deceased dies during the pendency of the claim petition, and the learned Tribunal erred in not considering the loss suffered by the claimants including the mother of the deceased. He submitted that the deceased, who was 18 years of age at the time of his death, was earning a sum of Rs. 6,000/- per month as a farmer. His earnings were being used for the welfare of the family, which had suffered economic loss due to his death. It is also contended by him that the income of the deceased formed part of the estate of the deceased and his death has resulted in the loss of estate to all his legal representatives.

8. Another contention raised by the counsel for the Appellant is that the dependency of the legal representatives is not necessary for the purpose of entitlement to compensation. He submits that legal representative of the deceased are entitled to compensation under the Motor Vehicles Act, 1988 even if they are not dependent upon the income of the deceased or where the deceased was not employed, as for instance in the case of minors and school going children. He seeks to support his contention by arguing that the legislature while drafting Section 166 of the Act has not used the word "dependents", but the expression "legal representatives" has been used. The learned Counsel for the Appellant points out that even in the case of Sarla Verma (supra), the claim petition had been filed by the widow, three minor children, parents and grandfather of the deceased and in the said case the entire family had been taken to be dependent upon the deceased, including the father and the grand-father of the deceased.

9. Ms. Neerja Sachdeva, the learned Counsel for the Respondent No. 3, the insurer of the offending vehicle, naturally sought to support the award, and to rebut the contentions of the learned Counsel for the Appellants by contending that just compensation had been awarded to the Appellant and there was no scope for the enhancement of the same.

10. After hearing the counsel for the parties at some length, I find merit in the arguments advanced by the counsel for the Appellant.

11. The expression "legal representatives", used in Section 166(1)(c) of the Motor Vehicles Act, 1988 has not been defined anywhere in the Act. The Legislature not having given the definition of expression "legal representatives" in the Motor

Vehicles Act, the definition of the expression "legal representatives" as given in Section 2(11) of the CPC Code, 1908 must be resorted to. According to Section 2(11) of the CPC Code, the expression "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. According to Sub-section (1) of Section 166 where death has resulted from the accident, an application for compensation may be made by all or any of the representatives of the deceased {clause (c)} or by any agent duly authorized by all or any of the legal representatives of the deceased {clause (d)}. The proviso is significant, inasmuch as it provides 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. In the circumstances, if the brothers and sisters of the deceased can be held to be within the purview of the definition of the "legal representatives" as given in Section 2(11) of the CPC qua the deceased involved in the accident, such brothers and sisters will be entitled to claim compensation, and if found entitled to the same to receive the compensation. Thus, all heirs and legal representatives of a victim are entitled to maintain an application u/s 166 of the Act, irrespective of the fact whether or not they are financially dependant upon the victim.

12. The Supreme Court in [Smt. Manjuri Bera Vs. The Oriental Insurance Company Ltd. and Another](#), has held as under:

9. According to Section 2(11) of 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. u/s 2(1)(g)."

10. As observed by this Court in Custodian of [Custodian of Branches of Banco National Ultramarino Vs. Nalini Bai Naique](#), 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 State Road Transport Corporation, Ahmedabad Vs. Ramanbhai Prabhatbhai and Another](#), 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 view of the aforesaid legal position, the inescapable conclusion is that the learned Tribunal has not assessed the amount of compensation payable to the Appellants by following the correct legal principles. The mother of the deceased was alive at the time of the death of the deceased and the amount of compensation, most certainly, fell due on the date of the accident. She died nine months after the demise of the deceased and her share of the compensation, had it been awarded by the Claims Tribunal before her death, would have obviously devolved upon her legal representatives viz., her husband and her children. The learned Tribunal did not at all consider this aspect of the matter. Even otherwise, as discussed above, the dependency of the legal representatives is not a sine qua non for the purpose of entitlement of the claimants to compensation, that is to say, even if the claimants are found not to be dependant upon the income of the deceased, they are entitled to the loss to the estate of the deceased as a result of his death. Such loss to the estate of the deceased would have to be ascertained keeping in view the income of the deceased and the amount the deceased would have spent on himself and the savings of the deceased which would then have to be quantified by the use of an appropriate multiplier with reference to the age of the claimants.

14. In the instant case, the claim petition has been presented by the mother and the father of the deceased. The quantum of compensation must, therefore, be ascertained on the basis of the fact that the mother of the deceased was alive on the date of the accident, and the right to sue for compensation accrued on said date. Had the Tribunal decided the claim petition instituted by her during her lifetime, in the event of her death, the entire amount would have devolved upon her legal representatives. Merely because she died during the pendency of the claim petition, by no stretch can be construed to mean that her claim abated.

15. In view of the aforesaid, the matter is remanded back to the learned Tribunal for determining the compensation payable to the Appellant in accordance with law. Parties shall appear before the learned Tribunal on 01.08.2011.

16. Records be sent back to the Tribunal forthwith.