



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.571 OF 2023

Bajaj Allianz General Insurance Co. Ltd. }
401, 405, Cristal Plaza, 4th Floor, Next to }
Hotel Mirador, Opp. Solitair Park, Chakala, }
Anderhi (E), Mumbai. } **....Appellant**

Versus

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- 1. Smt.Sunita Virendra @ Birendra Sahani** }
Age-30 years, Wife of deceased }
- 2. Ms.Rajkumari Virendra @ Birendra Sahani** }
Age-2 years, Daughter of Deceased }
- 3. Master Pawankumar Virendra @ Birendra Sahani** }
Son of deceased }
Respondent Nos.2 and 3 being minor thr. }
Mohterr Natural Guardian Respondent }
No.1. }
All R/at C/o.Ramsamuj Ganesh Sahani, }
Ashok Nagar, Ali Bahadur Chawal, Sarojini }
Naidu Road, Mulund, Mumbai-80. }
- 4. Gulzar Ramji Sahani** }
Age-65 years, Father of deceased }
- 5. Ramrati Gulzar Sahani** }
Age-60 years, Mother of deceased }

Respondent Nos.4 and 5 R/at Village Sapra, }
 Taluka-Gola, Thana Badahatganj, District- }
 Gorakhpur. }

6. Mr.Mohd. Abdul Miya Karim }
 Age- Adult, Occ : Not Known, }
 R/at Eksar Naitodi, Ahmed House, Eksar }
 Road, Borivali (W), Mumbai-400092 }Respondents

Mr.Devendranath S. Joshi, for the Appellant.
 Mr.T.J. Mendon, for the Respondent Nos.1 to 5.

CORAM : ARUN R. PEDNEKER, J.

DATE : 30th JULY 2024

JUDGMENT :-

1. By the present Appeal the Appellant-Insurance company challenges the award of the Motor Accident Claims Tribunal, ('MACT' for short) Mumbai, allowing the Claim Petition of dependents of the deceased.

2. The Appeal primarily raises two grounds (i) income of the deceased is erroneously taken at Rs.6000/- per month and (ii) the second submission is that the parents of the deceased were staying at a different place and, where not dependent on the deceased and, were not entitled to claim of compensation.

3. The facts giving raise to this Appeal in brief is as under:-

On 25th July 2010 at about 22.30 hours the deceased was crossing a Road and at that time one autorickshaw bearing No.MH-02-UA-8927 came from opposite side in a very rash and negligent manner and gave dash to the deceased. Due to the said dash deceased was thrown away from the place of the accident and he sustained injuries. Thereafter, he was moved to specaility hospital and died on 31st July 2010. The Police registered an offence against the driver of the autorickshaw. On demise of the accident victim the Claim Petition was filed by his wife, daughter, son and parents of the deceased. The Tribunal on consideration of the material held that the autorickshaw driver was negligent in driving. However, the Claimant's were not able to established the income of the deceased as the employer was not examined but held that the deceased being a skilled labourer, a notional income of Rs.6,000/- per month is considered. Accordingly, Tribunal computed the compensation at Rs.14,14,000/- and apportioned it in terms of the final order between the Claimants.

4. Challenging the above order passed by the MACT, the learned counsel for the Appellant submits that the notional income of Rs.6,000/- ought not to have been fixed. However, there is no merit in the submission of the Appellant as the deceased was a skilled worker and in the year 2010, it cannot be said that, he could have been earning less than Rs.6,000/- per month. The submission of the learned counsel for the Insurance Company as regards the income of the deceased, is rejected.

5. The second submission of the Appellant is that the parents of the deceased were staying separately in a different village and as such were not dependent on the deceased and thus not entitled for the Claim under Section 166 of the Motor Vehicle Act, 1988 ('M.V. Act' for short).

6. The issue of dependency and right to Claim compensation by legal representative is considered in various judgments of the Supreme Court. The Supreme Court in the case of *Montford Brothers of St Gabriel & Ors V/s. United India Insurance Co. Ltd.*¹, has held that every legal representative who

¹ 2014 ACJ 667

suffers on account of the death of a person due to a motor vehicle accident should have a remedy for realization of compensation and it relies upon the principles of law of Torts that every injury must have a remedy.

7. The Supreme Court *Montford Brothers (Supra)* accepted the judgment of the Full Bench of the Patna High Court in the case of *Sudama Devi V/s. Jogendra Choudhary*², wherein it held that the term 'legal representative' is wide enough to include even the successors to the trusteeship and trust property are legal representatives within the meaning of Section 2(11) of the Code of Civil Procedure.

8. The Supreme Court in the case of *N. Jayshree & Ors. V/s. Cholanandalam MS general Insurance Co. Ltd.*³ while interpreting the word "legal representative" in the M.V. Act at paragraph Nos.14 and 16 observed as under:-

14. The MV Act does not define the term 'legal representative'. Generally, 'legal representative' means a person who in law represents the estate of the deceased person and includes any person or persons in whom legal right to receive compensatory benefit vests. A 'legal representative'

2 AIR 1987 Patna 239

3 2021 ACJ 2685

may also include any person who intermeddles with the estate of the deceased. Such person does not necessarily have to be a legal heir. Legal heirs are the persons who are entitled to inherit the surviving estate of the deceased. A legal heir may also be a legal representative.

16. In our view, the term 'legal representative' should be given a wider interpretation for the purpose of [Chapter XII of MV Act](#) and it should not be confined only to mean the spouse, parents and children of the deceased. As noticed above, [MV Act](#) is a benevolent legislation enacted for the object of providing monetary relief to the victims or their families. Therefore, the MV Act calls for a liberal and wider interpretation to serve the real purpose underlying the enactment and fulfill its legislative intent. We are also of the view that in order to maintain a claim petition, it is sufficient for the claimant to establish his loss of dependency. [Section 166](#) of the MV Act makes it clear that every legal representative who suffers on account of the death of a person in a motor vehicle accident should have a remedy for realization of compensation.

9. The Supreme Court in the case of ***National Insurance Company Ltd V/s. Pranay Sethi & Ors.***⁴ held as under:-

In the absence of evidence to the contrary, brothers and sisters will not be considered as dependants, because they will either be independent and earning, or married, or be dependent on the father.

32. 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 the family of the bachelor is large and dependent 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.”

⁴ (2017) 16 SCC 680

10. In the case of *National Insurance Co. Ltd. V/s. Birender & Ors*⁵, considered the case of the major sons of the deceased who have married and gainfully employed, whether can claim compensation under the M.V. Act. At paragraph Nos.14 and 15 has observed as under:-

“14. 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 dependant on the deceased, would be still covered by the expression “legal representative” of the deceased. This Court in Manjuri Bera (supra) had expounded that liability to pay compensation under the Act does not cease because of absence of dependency of the concerned legal representative. Notably, the expression “legal representative” has not been defined in the Act. In Manjuri Bera (supra), the Court observed thus: “9. In terms of clause (c) of subsection (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 subsection 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

5 2020 ACJ 759

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.” In paragraph 15 of [the said decision](#), while adverting 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 Justice S.H. Kapadia, 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 the respondent Nos. 1 and 2 (claimants) even though they are major sons of the deceased and also earning.

15. 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 concerned legal representative was fully dependant on the deceased and not to limit the claim towards conventional heads only.”

11. From the law discussed in the above judgments of the Hon’ble Supreme Court it would be clear that even in absence of full dependency of the Claimant on the deceased, the liability to pay compensation to the legal representatives does not cease and the cause of the action of the legal representative to file Claim Petition would still survive. It is for the Tribunal to consider the evidence as to the extent of dependency of the

Claimant on the deceased.

12. Even if a person who dies in motor accident, leaves behind no dependents, the legal heirs of the deceased would still be entitled to claim compensation on account of loss of estate (i.e. loss of savings by the deceased) and would be entitled for compensation for loss of love and affection, funeral expenses etc. However, the concept of dependency under the M.V. Act is distinct from inheritance of the estate of the deceased under the Succession Law. The issue arose before the Division Bench of this Court as regards the dependency of the wife of the deceased and that of parents under the M.V. Act in comparison to the Mohammedan Law of succession. The Division Bench of this Court in the case of *Abdul Rahman & Others V/s. Dayaram & Ors.*⁶, at paragraph Nos.5 and 6 has held as under:-

5. Shri Kazi, the learned Counsel appearing for the appellants, submitted that as per the principles of Mohammedan law, appellant No. 1 father Abdul Raheman being the heir of deceased Mohammed Shafi is entitled to half of the total compensation and mother and widow to the extent of 1/4th each. We gave anxious consideration on this aspect. However, the compensation is being paid

⁶ 1989 (2) T.A.C. 423

taking into consideration the dependency of the claimants. We are of the opinion that we are not guided by the apportionment as provided under the Mohammedan law.

6. Appellant No. 1 father Abdul Raheman is aged 61 whereas mother of deceased is aged about 43. At the time of incident, appellant No. 3 Shahnazbanu was hardly aged about 28. Her dependency is comparatively more than appellants Nos. 1 and 2, taking into consideration her age. We, therefore, feel that it would be just and reasonable to pay half of the amount of compensation to appellant No. 3 and rest of the amount in equal share i.e. 1/4th to each appellant No. 1 and 2.

This Court in the case of *Abdul Rahman (Supra)* has held that the compensation under the M.V. Act is to be apportioned taking into consideration the dependency of the widow and the parents as contemplated under the M.V. Act and not guided by the principles of apportionment as provided by the Mohammedan Law.

13. In the instance case the Claimant's are Hindus. Under the Hindu Succession Act the Class I heirs inherit the entire property of the deceased to the exclusion of all others. Father of the deceased son is not a Class-I heir under the Hindu Succession Act. The father of the deceased is a Class II heir. However, the father who is Class II heir of the deceased is still

entitled to claim compensation under the MV. Act on account his dependency on his son. It is required to be noted that as a general principle, the extent of dependency of the unemployed widow would be highest on account of her age. The dependency of minor children would be lesser than the widow but more than parents. The parents of the deceased on account of their old age would have lesser dependency as compare to the widow and the children. Any other dependent can also filed a Claim and the dependency of the Claimant would be a matter of fact to be determined by the Tribunal.

14. In the instance case the impugned judgment indicates that there is no issue raised as regard the dependency of the parents on the deceased. In the ordinary circumstances in the Indian Social system, parents are dependent on their child to take care of them in their old age, irrespective of the fact that they would be staying in the villages/native place away from the son. The parents of the deceased/son are also entitled for filial consortium for loss of love, affection, care and companionship of the deceased child.

15. The arguments of the Insurance Company that the claim cannot be filed by the parents of the deceased as they were staying separate from the deceased in a native village as such were not dependent on the deceased cannot be accepted and the same is rejected. The First Appeal is also rejected and accordingly dismissed.

16. All pending Interim and Civil Applications are disposed of.

(ARUN R. PEDNEKER, J.)