

Smt. Supla Devi and anr. Vs. Ramesh Kumar and ors.

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Court : Himachal Pradesh

Decided On : May-09-2006

Reported in : II(2007)ACC152,2008ACJ288,2006(2)ShimLC153

Judge : Deepak Gupta, J.

Acts : [Motor Vehicles Act, 1988](#) - Sections 110A to 110F, 140, 163-A, 166, 173; ;
[Code of Civil Procedure \(CPC\) , 1908](#) - Order 1, Rule 10; ;Fatal Accident Act,
1855; ; Workmen Compensation Act, 1923(1);

Appeal No. : F.A.O. No. 478 of 2005

Appellant : Smt. Supla Devi and anr.

Respondent : Ramesh Kumar and ors.

Advocate for Def. : Suneet Goel, Adv. for the Respondents 1 and 2 and; Ashwani Sharma, Adv. for the Respondent 3

Advocate for Pet/Ap. : Denish Bhanot, Adv.

Disposition : Appeal allowed

Judgement :

Deepak Gupta, J.

1. The present appeal under Section 173 of the Motor Vehicles Act is directed against the award passed by the Motor Accident-Claims Tribunal (II) (Fast Tract Court), Hamirpur in MAC Petition No. 59 of 2003/20 of 2005 decided on 24.9.2005 whereby he has rejected the claim petition filed by the present appellants.

2. Briefly stated the facts of the case are that one Prithi Singh was sitting in a rain shelter in village Kuthera on 22.7.2003. At about 12.45 p.m. truck No. HP-11-0717 owned by Ramesh Kumar, driven by Sanjiv Kumar and insured with the National Insurance Company dashed into the rain shelter which collapsed resulting in the death of Prithi Singh and one another person. Some injuries were also caused to other persons sitting in the rain shelter.

3. Two claim petitions were filed with regard to the death of Prithi Singh. One claim petition was filed by the present appellants i.e. Supla Devi and Meena Devi who are admittedly the daughters of the deceased Prithi Singh. In this case claim petition, Smt. Sandlan Devi and Veena Devi two other daughters of the deceased were arrayed as proforma respondents. One claim petition was filed by Subhash Chand son of Munshi Ram who claimed to be the legal representative of the deceased Prithi Singh on the allegations that his mother Smt. Brahmi Devi had married Prithi Singh when he was just a boy aged 6 years old. He also alleged that as per one Will executed by the deceased Prithi Singh he is the sole legal representative of the deceased.

4. Subhash Chand moved an application under Order 1 Rule 10 CPC for being impleaded as a respondent in the claim petition filed by the present appellants. This application was rejected on 22.9.2004 by the learned Tribunal on the ground that he had already filed a separate claim petition. On 3.3.2005 issues were framed and both the petitions were clubbed together and evidence in both the petitions was ordered to be recorded in the petition filed by the present appellants. All the parties led evidence. The learned Tribunal came to the conclusion that the accident had occurred due to the rash and negligent driving of the truck but held that since the present appellants as well as other two daughters were already married, they were not dependant upon the deceased. After holding so, the learned Tribunal held that since they were not dependent they were not entitled to

the compensation and dismissed the claim petition. While doing so, the learned Tribunal has relied upon the judgment of this Court in *Narbadu Devi v. H.R.T.C.* 1996 (1) SLJ 142. The appellants have filed the present appeal challenging the award of the learned Tribunal.

5. It would be pertinent to mention here that as far as the petition filed by Subhash Chand is concerned, the same was dismissed as withdrawn on 24.9.2005 as he was no longer interested in pursuing the claim petition.

6. I have heard Shri Dinesh Bhanot learned Counsel for the appellants as well as Shri Sunit Goel learned Counsel for respondents No. 1 and 2 and Shri Ashwani Sharma, learned Counsel for respondent No. 3.

7. From the evidence on record, it is clear that the present appellants and respondents 4 and 5 were the daughters of the deceased Prithi Singh. It is also proved that Prithi Singh had married Brahmi Devi and that the claimant Subhash Chand was the son of Brahmi Devi from a previous marriage. It is also proved that the daughters were married and they were living in their marital homes. Meena Devi is a widow and the other sisters were living with their respective husbands.

8. From the evidence on record it can also be deduced that the daughters were not dependent on the deceased for their day to day expenses. The question which arises is whether the daughters were not entitled to any compensation merely because they were not dependant upon the deceased.

In my opinion, the answer has to be that the daughters are entitled to compensation and the award of the learned Tribunal is incorrect.

9. The judgment in *Narbadu Devi's* case (*supra*) relied upon by the learned Tribunal was not at all applicable to the facts and circumstances of the present case. In that case, the question which arose was basically a dispute inter se the claimants. Compensation had been awarded to some of the claimants but the claim of *Narbadu Devi* who was already married was rejected on the ground that she was not dependent upon her parents. In fact, the learned Tribunal has not at all taken into consideration the latest judgment of the Division Bench of this Court

reported in 1999 (1) Shim. L.C. 427, T.C. Bhatia v. Oriental Insurance Co. Ltd. In this case, the question in issue specifically was that whether the appellants who were not dependent upon the deceased could be granted compensation by the Tribunal. The Division Bench followed the judgment of the Apex Court in Gujarat State Road Transport Corporation, Ahmedabad v. Ramanbhai Prabhatbhai and Anr. 1987 ACJ 561.

10. The Apex Court in Ramanbhai's case, held as follows:

11. We feel that the view taken by the Gujarat High Court is in consonance with the principles of justice, equity and good conscience having regard to the conditions of the Indian society. Every legal representative who suffers on account of the death of a person due to a motor vehicle accident should have a remedy for realization of compensation and that is provided by Sections 110-A to 110-F of the Act. These provisions are in consonance with the principles of law of torts that every injury must have a remedy, it is for the Motor Vehicles Accidents Tribunal to determine the compensation which appears to it to be just as provided in Section 110-B of the Act to specify the person or persons to whom compensation shall be paid. The determination of the compensation payable and its apportionment as required by Section 110-B of the Act amongst the legal representatives for whose benefit an application may be filed under Section 110-A of the Act have to be done in accordance with well known principles of law. We should remember that in an Indian family brothers, sisters and brothers children and sometimes foster children live together and they are dependant upon the bread-winner of the family and if the breadwinner is killed on account of a motor vehicle accident, there is no justification to deny them compensation relying upon the provisions of the Fatal Accidents Act, 1855 which as we have already held has been substantially modified by the provisions contained in the Act in relation to cases arising out of motor vehicles accidents. We express our approval of the decision in Megjibhia Khimji Vira v. Chaturbhai Taljabhai : AIR1977 Guj195 (supra) and hold that the brother of a person who dies in a motor vehicle accident is entitled to maintain a petition under Section 110-A of the Act if he is a legal representative of the deceased.

11. this Court following the aforesaid decision in T.C. Bhatia's case, held as follows

12. We have given our anxious consideration to the contentions of the learned Counsel on either side and examined the entire material on record. We do not agree with the reasoning of the learned 'Tribunal below that since the appellants-claimants were not dependent upon their deceased legal heirs, therefore, they are not entitled for compensation in accordance with the provisions of the Motor Vehicles Act. The Tribunal appears to have assumed wrongly that all legal representatives of the deceased persons who died in the accident should be dependent upon the deceased and only those dependants are entitled for claiming compensation.

16. Applying the well settled position of law in the present case, we hold Shri T.C. Bhatia father of deceased Kumari Chandrika Bhatia and Shri Dinesh Kumar Bhatia, son of Shri S.R. Bhatia and Smt. Lalita Bhatia who admittedly are the legal representative of the deceased and they are entitled to succeed the estate of the deceased.

12. Keeping in view the law laid down by this Court, it is not necessary for me to refer to the judgments relied upon by Shri Ashwani Sharma learned Counsel for the insurer delivered by other High Courts. In addition to what has been observed by this Court hereinabove and the observations of the Apex Court, there is another ground for holding that the daughters would be entitled to compensation.

13. Section 163-A of the Motor Vehicles Act was introduced vide Act No. 55 of 1994 w.e.f. 14.11.1994. This Section reads as follows:

[163-A. Special provisions as to payment of compensation on structured formula basis.(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle of the authorized insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

Explanation. For the purposes of this Sub-section, 'permanent disability' shall have the same meaning and extent as in the Workmen's Compensation Act, 1923.

(2) In any claim for compensation under Sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule].

14. By virtue of this Section, the owner and the authorized insurer are liable to pay compensation to the legal representatives of the victim in the case of death. Obviously, the daughters of the deceased are legal representatives. They are not only legal representatives but are also the legal heirs. Subhash Chand would not be a legal heir under the Hindu Law but may be a legal representative under the Will. However, this question need not be gone in detail since Subhash Chand has withdrawn his claim petition and the only claim petition pending is with regard to the daughters who are the legal representatives of the deceased.

15. As far as the question of quantum is concerned this Court has repeatedly held that the compensation to be paid to the claimants who file a claim petition under Section 166 of the Motor Vehicles Act should not be less than the minimum amount payable under Section 163-A of the Motor Vehicles Act.

16. A claimant has a choice of either applying for compensation under Section 166 of the Act in which event he must prove negligence on the part of the tortfeasor or the claimant can also apply for compensation under Section 163-A of the Act where he need not prove negligence of any party. This Court has consistently taken the view that even when a claimant files a petition under Section 166 of the Act the Courts while assessing the compensation must keep in mind the compensation which would have been payable to the claimant if he or she had approached the learned Tribunal under Section 163-A of the Act. The compensation payable under Section 166 of the Act should not be less than the minimum amount payable under the structured formula under Section 163 of the

Act. It would be a travesty of justice if a person who proves negligence and the income of the deceased is awarded lesser compensation than a person who neither proves negligence nor proves the income of the deceased. According to Note No. 6 under the second schedule framed under Section 163-A of the Act the notional income for compensation to those who had no income prior to the accident is to be taken at Rs. 15,000/- per annum. Therefore, minimum compensation under Section 163-A of the Act has to be assessed by taking into consideration the minimum income at Rs. 15,000/- per annum. This is to be multiplied by the multiplier mentioned and thereafter 1/3rd of the amount has to be deducted for the personal expenses of the deceased. The claimants are also entitled to Rs. 2,000/- for funeral expenses, Rs. 2,500/- for loss to the estate and in case one of the claimants is a spouse then Rs. 5,000/- is to be awarded, for loss of consortium.

17. In view of the above discussion I am clearly of the opinion that even in a claim tiled under Section 166 of the Act the amount of compensation to be awarded cannot fall below the minimum compensation payable under the structured formula under Section 163 of the Act. It is only this approach which can advance the intention of the legislature to make just and reasonable compensation available to the victims of a motor accident.

18. In view of the above position or law and the view being followed by this Court, I am of the opinion that the claimants would be entitled to atleast minimum amount payable under Section 163-A of the Motor Vehicles Act. The learned Tribunal could not have rejected the claim for grant of interim compensation of Rs. 50,000/- atleast. This amount payable under Section 140 as no fault liability has to be paid under any circumstances whatsoever. Therefore, the claimants in my opinion should not have been paid any amount less than the amount payable under Section 163 of the Motor Vehicles Act.

19. The age of the deceased was 59 years at the time of his death. Therefore, the minimum compensation payable to the legal representatives under the second schedule framed under Section 163-A of the Act would be Rs. 15,000 x 8 = Rs. 1,20,000/-. Out of this 1/3rd of the amount i.e. Rs. 40,000/- has to be deducted for

the personal expenses of the deceased. The balance amount comes to Rs. 80,000/-. The claimants are also entitled to Rs. 2,000/- for funeral expenses, Rs. 2,500/- for loss to the estate. The total compensation works out to Rs. 84,500/-. This amount shall be equally shared by all the four daughters i.e. present appellants and respondents No. 4 and 5.

20. In view of the above discussion, the appeal is allowed and the award of the learned Tribunal is set aside and the claim petition filed by the claimants is partly allowed and the appellants as well as respondents 4 and 5 are held entitled to compensation of Rs. 84,500/- in equal shares. In addition thereto, the claimants shall also be entitled to interest @ 9% per annum w.e.f. 18.9.2003 till the date of payment/deposit of the amount. The respondents 1 to 3 are jointly and severally held liable to pay this amount. Since the vehicle was insured with the National Insurance Company-respondent No. 3, it is directed to deposit the amount in the Registry of this Court within 12 weeks from today. No costs.

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