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Court : Delhi

Decided On : Feb-29-2012

Judge : G.P. Mittal

Appeal No. : MAC APP. 1108 of 2011

Appellant : Guddi

Respondent : Phool Singh and Others

Judgement :

JUDGMENT

G. P. MITTAL, J. (ORAL)

1. The Appellant who is legal representative of the deceased Ram Bati being her daughter seeks enhancement of compensation of `80,000/- awarded for her death.

2. It is urged by the learned counsel for the Appellant that for a claim of compensation, the Claimant need not necessarily be financially dependent on the deceased and the legal representatives are entitled to compensation under Section 166 of the Motor Vehicles Act. Reliance is placed on a judgment of Madhya Pradesh High Court in *Gajanand and Ors. v. Virendra Singh and Ors.*, 2010 ACJ 145, wherein it was held as under:

“13. So far as amount of compensation is concerned, since no assessment has been made by the learned Tribunal, therefore, the case could have been remanded to the learned Tribunal for assessment of compensation. However, since appellants are elder brothers and financially well settled and were not dependent on the deceased financially, but were dependent on the deceased for number of reasons, this court thinks fit to award a sum of ` 1,50,000/- as compensation, which includes all the heads including no fault liability.”

3. There is no dispute about the proposition of law that the legal representatives are entitled to maintain a Petition under Section 166 of the Act irrespective of their financial dependency.

4. In *Manjuri Bera (Smt.) v. Oriental Insurance Company Limited and Anr.* (2007) 10 SCC 643, the question of award of compensation for death of a married daughter came up for consideration before the Calcutta High Court. The Claim Petition filed by the deceased's mother was dismissed by the Tribunal as also by the Calcutta High Court on the ground that there was no loss of dependency. The Supreme Court referred to the term „*legal representative?*, as used under Section 168 of the Motor Vehicles Act (the Act) with reference to its definition under Section 2 (11) of the Code of Civil Procedure (CPC) and held that the definition of „*legal representative?*as contained in Section 2 (11) CPC is applicable to the Act and is inclusive in character, its scope is wide and is not confined to legal heirs only. The Supreme Court referred to *Custodian of Branches of BANCO National Ultramarino v. Nalini Bai Naique*, 1989 Supp. (2) SCC 275 and held that the legal representatives are entitled to the statutory compensation payable under Section 140 of the Act. Para 13 to 15 of the report are extracted hereunder:-

“13. There are several factors which have to be noted. The liability under Section 140 of the Act does not cease because there is absence of dependency. The right to file a claim application has to be considered in the background of right to entitlement. While assessing the quantum, the multiplier system is applied because of deprivation of dependency. In other words, multiplier is a measure. There are three stages while assessing the question of

entitlement. Firstly, the liability of the person who is liable and the person who is to indemnify the liability, if any. Next is the quantification and Section 166 is primarily in the nature of recovery proceedings. As noted above, liability in terms of Section 140 of the Act does not cease because of absence of dependency.

14. Section 165 of the Act also throws some light on the controversy. The Explanation includes the liability under Sections 140 and 163-A.

15. Judged in that background where a legal representative who is not dependant files an application for compensation, the quantum cannot be less than the liability referable to Section 140 of the Act. Therefore, even if there is no loss of dependency the claimant if he or she is a legal representative will be entitled to compensation, the quantum of which shall be not less than the liability flowing from Section 140 of the Act.”

5. In para 10 of the affidavit Ex.PW1/AA filed during inquiry before the Claims Tribunal, the Appellant deposed that she was looking after the deceased being her only legal heir and was entitled to succeed to the estate of the deceased. Thus, it is not in dispute that the Appellant was not financially dependent on the deceased. In the circumstances, I would award the compensation of `50,000/- awarded under Section 140 towards loss to estate and increase the sum of `15,000/- towards loss of love and affection to `25,000/-, in addition to a sum of `15,000/- awarded by the Claims Tribunal towards funeral expenses.

6. The overall compensation is enhanced from `80,000/- to `90,000/-.

7. The enhanced compensation of ` 10,000/- shall carry interest @ 7.5 per annum from the date of filing of the petition till the date of payment.

8. Respondent No.3 the National Insurance Company Limited is directed to deposit the enhanced amount along with interest within 30 days with the Registrar General of this Court.

9. The amount along with interest shall be released to the Appellant on deposit.

10. The appeal is allowed in above terms.

