

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

HON'BLE SHRI JUSTICE AMAR NATH (KESHARWANI)

MISC. APPEAL No. 238 of 2019

BETWEEN:-

**1. NATIONAL INSURANCE COMPANY LIMITED THR.
DIVISIONAL MANAGER T.P.HUB OFFICE AT
MARHOTAL JABALPUR (MADHYA PRADESH)**

.....APPELLANT

(MS. ASGHARI KHAN – ADVOCATE FOR THE APPELLANT)

AND

**1. JAMNI BAI W/O REWA SINGH MARAWI, AGED
ABOUT 37 YEARS, R/O HOUSE NO.28 WARD NO.2,
DIWAN TOLA GUJAR SANI, BAMNHI BHAWAL
NIWAS, MANDLA (MADHYA PRADESH) PIN CODE
481662**

**2. KHUSHILAL MARAWI S/O DASHMANLAL
MARAWI OCCUPATION: DRIVER OF VEHICLE R/O
BIJHIYA, TAHSIL AND DISTT. MANDLA (MADHYA
PRADESH)**

**3. DADDO SINGH MARKO S/O BL MARKO
RESIDENT OF RAJENDRA PRASAD WARD MANDLA
TAHSIL AND DISTRICT MANDLA, (MADHYA
PRADESH)**

.....RESPONDENTS

***(NONE FOR THE RESPONDENTS, THOUGH THE NOTICES HAVE BEEN
SERVED)***

Reserved on : 11/05/2023

Passed on : 28/06/2023

This Miscellaneous Appeal having been heard and reserved for order, coming on for pronouncement on this day, Justice Amar Nath (Kesharwani) pronounced the following:

ORDER

Appellant/Insurance Company has preferred this appeal under Section 173(1) of the Motor Vehicles Act, 1988 being aggrieved by the award dated 11.10.2018 passed by learned Motor Accident Claims Tribunal, Mandla (M.P.) in MACC No.164/2016, whereby learned Tribunal has awarded Rs.2,82,000/- (Two lacs Eighty Two thousand Only) with interest of 6% per annum from the date of filing of claim petition.

2. Brief facts of the case are that on, 12.10.2015 at around 02:00 PM, claimant/respondent No.1 was riding on Motor-cycle No.MP-51-MB-4683 which was driven by respondent No.2 and deceased Khutiya Bai w/o Sukhai Gond was also riding on the said Motor cycle at the time of the incident. Offending vehicle was being driven in rash and negligent manner by respondent No.2 as a result of which Khutiya Bai fell down from the motorcycle and sustained injuries and died on spot. Report of incident was lodged at Police Station-Tekeriya. Being the legal representative of deceased Khutiya Bai, the respondent No.1 filed a claim petition under Section 166 of the Motor Vehicles Act before the Motor Accidents Claims Tribunal, Mandla claiming Rs.19,50,000/-(Nineteen lacs Fifty Thousand rupees), wherein it was alleged that at the time of incident, deceased was a healthy lady aged about 65 years and was receiving income of Rs.8,000/- per month from the work of labour and agriculture. Hence, prayed to award the compensation as claimed in petition.

3. Respondent Nos.1 and 2 have not contested the case before the Claims Tribunal despite the service of notice and it was proceeded *ex-parte* by the Tribunal on 11.10.2018.

4. Appellant/Insurance Company in its written statement denied the averments mentioned in the claim petition and pleaded that respondent No.1 did not have a valid driving license to ride the alleged vehicle at the time of the incident, which is the breach of Insurance Policy. Deceased was an old lady aged about 70 years and she was incapable of doing any work and that the claimant was not the dependent of the deceased. Report was lodged day after the incident, which shows that the deceased did not expire in the accident caused by offending vehicle but the nature of death of deceased was natural or she died due to falling down or other reasons and pleaded that vehicle No.MP-51-MB-4683 was falsely implicated in the case to get the claim amount in connivance with respondent Nos.1 and 2, hence, respondent No.3 has no liability to pay any compensation and prays to dismiss the petition against the insurance company.

5. Learned Claims Tribunal has framed the issues. Respondent No.1 (Jamni Bai) examined herself as AW-1 and other witness Johan Maravi as AW-2 in support of his claim petition. Appellant/Non-applicant No.3 has not produced any evidence in support of their pleadings. After considering the evidence placed on the record and considering the argument advanced by the learned counsel for the parties, learned Claims Tribunal has passed the impugned award and has awarded compensation amount as mentioned in para-1 of the order. Being aggrieved by the impugned award, appellant/Insurance Company has preferred the present miscellaneous appeal.

6. Learned counsel for the appellant submitted that the award passed by the learned Claims Tribunal is against the settled principle for grant of compensation in the case of motor accidents. Learned Claims Tribunal has erred in not taking into consideration the fact that the claim petition is based on the fabricated and concocted documents and there was a

collusion between the owner of the vehicle and claimant. Learned Claims Tribunal has grossly erred in considering the respondent No.1 as dependent on the earnings of the deceased. Learned Claims Tribunal has also erred in not distinguishing between Section 140 and Section 166 of the Motor Vehicles Act (for short 'the Act'). Section 140 of the Act contains that the amount of compensation is fixed i.e. Rs.50,000/- which is just like estate, and for this amount, the legal representative is entitled. But under Section 166 of the Act, the multiplier system is applied because of deprivation of dependency and as such the person who is not dependent, Section 166 will not be applicable. Learned Claims Tribunal should have taken into consideration that though a married daughter can be covered by the expression 'legal representative' but shall not be entitled to any compensation unless she was dependent on the deceased. Respondent No.1 was a married daughter of deceased and she was living with her husband in her husband's house, therefore, she is not entitled for compensation. Hence, prays to allow the appeal and modify the order dated, 11.10.2018 passed by the Motor Accident Claims Tribunal in MACC No.164/2016 to the effect that award passed by the learned Tribunal be reduced to the extent of Rs.80,000/-.

7. Learned counsel for the appellant advanced their arguments to the extent indicated above.
8. Despite the service of notice, no one appeared during the argument on behalf of the respondents.
9. Learned counsel for the appellant in support of her contention placed reliance on *Manjuri Bera vs. Oriental Insurance Co. Ltd. and another* reported *in 2007 ACJ 1279*.

10. I have heard the learned counsel for the parties, perused the record of the claims Tribunal and citation placed by the learned counsel for the appellant.

11. It is not disputed in the case that the respondent No.1 is married daughter of deceased Khutiya Bai and respondent No.1 is the sole legal heir of deceased Khutiya Bai. It is also undisputed that Khutiya Bai died due to motor vehicle accident caused by the offending vehicle. Learned counsel for the appellant only raised objection on the point that the learned Tribunal has awarded amount under Section 166 of the Motor Vehicles Act and applied the multiplier, which is not permissible in the case because respondent No.1 was not dependent on the deceased Khutiya Bai, and respondent No.1 is only entitled for the amount under Section 140 of the Motor Vehicles Act towards loss of estate.

12. Respondent No.1/claimant Jamni Bai (AW-1) in Para-6 of her cross-examination has denied the suggestion of counsel for the Insurance Company that she lives with her husband in her matrimonial house and her mother resided separately. AW-1 in para-8 of her cross-examination also denied the fact that her mother never resided with her. It is also denied that she was not dependent on her mother.

13. Appellant/Insurance Company has not lead any evidence to support their pleadings, hence, pleadings of appellant/insurance company is not proved by any cogent evidence. It is also not proved that the claim petition was filed with collusion of owner of the vehicle. Hence, due to lack of evidence on behalf of appellant/Insurance Company and looking to the fact that the statement of Jamni Bai (AW-1) was not challenged on the point of dependency, it cannot be said that the claimant/respondent No.1 never resided with the deceased and claimant has not derived financial assistance from deceased.

14. In the case of *National Insurance Company Ltd. vs. Birender and Others reported in 2020 (11) SCC 356*, Hon'ble Apex Court has held that "even major married and earning sons of deceased being legal representatives have a right to apply for compensation and it would be bounden duty of Tribunal to consider application irrespective of whether they were fully dependent on deceased or not, in accordance with law".

Para numbers 12 and 14 are reproduced as below:-

"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.”

15. The same analogy will be applicable in the present case, where claimant is a married daughter.

16. In the case of *Manjuri Bera vs. Oriental Insurance Company Ltd. and another* reported in 2007 ACJ 1279, Hon’ble Apex Court has held that even a married daughter not dependent on the deceased is entitled to file claim for the death of her father.

17. It is also pertinent to mention here that in the case of **Manjuri Bera** (supra), claim was filed under Section 140 of the Motor Vehicles Act and in that case Hon’ble Apex Court has not held that multiplier system will not apply in the case in which the claimant is married daughter or married son.

18. Learned tribunal has assumed notional income of deceased as Rs.4,500/-(Four thousand Five hundred) per month and the expenditure which the deceased could have incurred on herself to be calculated by subtracting 1/3rd of her ascertained income and looking to the age of deceased and applying the multiple of 7, total amount of dependency is calculated as Rs.2,52,000/- (Two lacs Fifty Two thousand) and as per the constitutional bench of **Hon’ble Apex Court in National Insurance Co. Ltd. vs. Pranay Sethi & Ors. (2017) 16 SCC 680**, in the item of funeral expenses, Rs.15,000/- (Fifteen thousand) and for the loss of estate, Rs.15,000/- (Fifteen thousand) were awarded. Thereby total compensation

amount Rs.2,82,000/-(Two lacs Eighty Two thousand) only has been awarded which is according to settled principle of law.

19. Accordingly, the award dated 11.10.2018 passed by Member Motor Vehicle Accident Claims Tribunal, Mandla (M.P.) in MACC No. 164/2016 is hereby affirmed.

20. Hence, the appeal fails and is dismissed accordingly.

**(AMAR NATH (KESHARWANI))
JUDGE**

DPS