

Before Sudhir Mittal, J.

NEW INDIA ASSURANCE COMPANY LIMITED—Appellant

versus

RAJ RANI VERMA AND OTHERS—Respondents

FAO No.810 of 2018

January 12, 2021

Motor Vehicles Act, 1988 – Death case – Deceased was 59 years of age, due to retire from service – The Tribunal awarded compensation to his widow and major son – Challenge to the quantum of compensation by the Insurance – Plea that deceased’s monthly income should be considered till the date of retirement and reduced thereafter by 50 per cent – Besides, claim petition on behalf of his major son was not maintainable, therefore dependency be reduced by 50 per cent – Held, even if deceased was to retire within a short span of time, his income had to be assessed keeping in view the earnings at the time of accident after deduction of income tax – Claimants are entitled to future prospects also – Further held, as laid down in Birender case (2020 ACJ 759), an earning member of deceased’s family can maintain claim petition provided he is a legal representative – Appeal dismissed.

Held that, thus, it is apparent that even if, the deceased was to retire within a short span of time, his income has to be assessed keeping in view his earnings at the time of accident after deduction of income tax. The claimants are also entitled to grant of compensation on account of future prospects. Thus, no error has been committed by the learned Tribunal, in this regard.

(Para 9)

Further held that, the aforementioned dictum makes it clear that an earning member of the family of a deceased person can maintain the claim petition provided he is a legal representative. Claim of such a member cannot be restricted to the conventional heads only.

(Para 11)

Suman Jain, Advocate and
Man Mohan, Advocate
for the appellant.

Ashwani Arora, Advocate

for respondents No.1 and 2.

Manoj Kumar Pundir, Advocate
for respondents No.3 and 4

SUDHIR MITTAL, J. (oral)

CM-10117-CII-2020

(1) With the consent of learned counsel for the parties, the main appeal is taken on board today.

FAO-810-2018

(1) An accident took place on 18.2.2017, in which, Sadhu Singh son of Late Surjan Singh died. His date of birth was 20.6.1958 and he was aged 59 years at the time of his death. He was due to retire on 30.6.2018 from his employment as Attendant Multi Skilled III in Terminal Ballistics Research Laboratory, Sector-30, Chandigarh. Admittedly, his monthly income was Rs.43,220/-.

(2) Upon consideration of the matter, the Motor Accident Claims Tribunal, SAS Nagar, Mohali (hereinafter referred to as 'the Tribunal') awarded compensation of Rs.36,97,000/- to the petitioners before it i.e. widow and major son. The quantum of compensation has been challenged by the Insurance Company in the present appeal.

(3) Learned counsel for the appellant has submitted that it is on record that deceased-Sadhu Singh was due to retire on 30.6.2018. Thus, per month income of Rs.43,220/- should have been considered only till the date of his retirement and thereafter, the same should have been reduced by 50%. It is further submitted that the claim petition on behalf of major son, who was aged 31 years should not have been entertained. Accordingly, dependency would be reduced to 50%. These aspects of the case have been ignored by the learned Tribunal and thus, the appeal deserves to be allowed.

(4) The appeal is resisted by the claimants on whose behalf it has been submitted that according to the judgment in ***K.R. Madhusudan and others*** versus ***Administrative Officer and another***¹, in case a deceased is about to retire after a short period his income cannot be split. The compensation has to be calculated on the basis of the income earned at the time of death after deduction of income tax.

¹ 2011 ACJ 743

Reliance is also placed upon *National Insurance Company Limited* versus *Pranay Sethi and others*², wherein, it has held that if the deceased is aged between 50 years and 60 years, 15% of his annual income should be considered towards future prospects.

(5) Learned counsel for the respondents further submits that the Supreme Court in *National Insurance Company Limited* versus *Birender and others*³, has considered the aspect of maintainability of a claim petition filed under Section 166 of the Motor Vehicles Act, 1988 (for short the 'Act'), by a major earning member of the family and has held that the same is maintainable on behalf of such a member as well keeping in view the language of Section 166 of the Act, where, the term used is 'legal representative of the deceased'. Accordingly, it has been argued that the appeal has no merit and deserves dismissal.

(6) In *K.R. Madhusudan's* case (*supra*), the concept of split multiplier has been deprecated.

(7) Relevant part of the judgment is reproduced below:-

“14. In view of this evidence the Tribunal should have considered the prospect of future income while computing compensation but the Tribunal has not done that. In the appeal, which was filed by the appellants before the High Court, the High Court instead of maintaining the amount of compensation granted by the Tribunal, reduced the same. In doing so, the High Court had not given any reason. The High Court introduced the concept of split multiplier and departed from the multiplier used by the Tribunal without disclosing any reason therefor. The High Court has also not considered the clear and corroborative evidence about the prospect of future increment of the deceased. When the age of the deceased is between 51 and 55 years the multiplier is 11, which is specified in the II column in the Second Schedule to the Motor Vehicles Act and the Tribunal has not committed any error by accepting the said multiplier. This court also fails to appreciate why the High Court chose to apply the multiplier of 6.”

(8) In *Pranay Sethi's* case (*supra*), it has been held as under:-

² 2017 ACJ 2700

³ 2020 ACJ 759

“61. (iii) While determining the income, an addition of 50 per cent of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30 per cent, if the age of the deceased was between 40 and 50 years. In case the deceased was between the age of 50 and 60 years, the addition should be 15 per cent. Actual salary should be read as actual salary less tax.”

(9) Thus, it is apparent that even if, the deceased was to retire within a short span of time, his income has to be assessed keeping in view his earnings at the time of accident after deduction of income tax. The claimants are also entitled to grant of compensation on account of future prospects. Thus, no error has been committed by the learned Tribunal, in this regard.

(10) In the case of *Birender* (supra), the Supreme Court has held as below:-

“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 bounden duty of the Tribunal to consider the application irrespective of the fact whether the concerned legal representative 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 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 earnings of their mother and, in fact, were staying with her, who met with an accident at the young age of 48 years.”

(11) The aforementioned dictum makes it clear that an earning member of the family of a deceased person can maintain the claim petition provided he is a legal representative. Claim of such a member cannot be restricted to the conventional heads only.

(12) In view of the aforementioned judgments, I am of the

considered view that the learned Tribunal has not committed any error in determining the compensation. The appeal has no merit and is dismissed.

Tribhuvan Dahiya