

113 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-1178-2020
Date of Decision:04.08.2025

RAJIV SHARMA

...Appellant

Vs.

SUKHDEV SINGH AND OTHER

...Respondents

CORAM:- HON'BLE MS. JUSTICE NIDHI GUPTA

Present: Mr. Shantanu Bansal, Advocate
for the appellant.

NIDHI GUPTA, J. (Oral)

CM-3136-C-2020

The present application has been filed under Section 5 read with Section 151 CPC of the Limitation Act, 1965, for condonation of delay of 233 days in filing the appeal.

For the reasons mentioned in the application, duly supported by an affidavit, delay of 233 days in filing the appeal is condoned.

CM stands disposed of.

FAO-1178-2020

The present appeal has been filed by the claimant who is the 36-year-old son of the deceased, seeking enhancement of the compensation of Rs.1,00,000/- awarded by the learned Motor Accident Claims Tribunal, Ambala, (hereinafter 'the Tribunal'), vide Award dated 21.01.2019 passed in MACT case No. 82 of 2016 instituted on 20.09.2016 under Section 166 of the Motor Vehicles Act, 1988, (in short 'MV Act'). The said lumpsum compensation of Rs.1,00,000/- was awarded to the appellant '*on account of loss of love and affection to the claimant*'.

2. Brief facts of the case are that the learned Tribunal on the basis of the pleadings and oral and documentary evidence adduced before it had concluded that

the deceased Ishwar Chand had died due to injuries suffered by him in a motor vehicular accident that took place on 13.05.2016 due to rash and negligent driving of the truck-trailer bearing registration no. PB-13-Q-8366 (hereinafter 'the offending vehicle'), being driven by respondent no.1, owned by respondent No.2 and insured by respondent No.3.

3. Learned counsel for the appellant *inter alia* submits that the learned Tribunal was in error in holding that the appellant was not entitled to compensation as he was 36 years old at the time of death of his father-Ishwar Chand. It is submitted that merely because the appellant was major son of the deceased, he could not be denied compensation; especially in view of the fact that the appellant was dependent upon the income of the deceased and had also been residing with the deceased. In support of his contention, learned counsel relies upon judgment of the Hon'ble Supreme Court in ***Civil Appeal No. 2323 of 2025 arising out of SLP (C)No.444 of 2025, Seema Rani and others Vs. The Oriental Insurance Co. Ltd. and others***, the claimant wherein had been awarded compensation, despite being the major son of the deceased therein. It is accordingly prayed that impugned Award be modified, and compensation be granted to the appellant in accordance with law.

4. Heard. No other arguments.

5. It is admitted by the appellant that at the time of filing of the claim petition and at the time of death of his father Ishwar Chand on 13.05.2016, the appellant was 36 years old; and the deceased was 58 years old. The appellant in his cross-examination as PW-1 has admitted that he had got married in the year 2004. Admittedly, prior to the death of his father, he was residing with his family in Ludhiana. However, it has been pleaded by the appellant that six months prior to the accident, the appellant had moved to Ambala and was residing there with his father. Firstly, no evidence has been produced by the appellant in this regard.

Further, perusal of the file reveals that it has been admitted by the appellant in his cross-examination that even in Ambala, he was living in his own house. Clearly, therefore, there is nothing on record to indicate any financial dependence of the appellant upon the deceased. It is writ large that the appellant is only pleading dependency upon the deceased in order to procure the compensation amount. It is my clear view that the beneficial legislation of the Motor Vehicle Act cannot be misused and is not for distributing public money amongst undeserving claimants. No doubt as per S. 166 of the Act an application for compensation may be made by all or any of the 'legal representatives' of the deceased. The term 'legal representatives' is not defined in the Act. As per S. 2(11) CPC 'legal representative' is a person who in law represents the estate of the deceased and has been interpreted to include a person who intermeddles with the estate of the deceased. However, in the context of, and for the purposes of the MV Act and claims arising therefrom, the Hon'ble Supreme Court in case of ***Smt. Manjuri Bera v. The Oriental Insurance Company Ltd., (SC) : Law Finder Doc Id # 126848***, has correctly drawn/upheld the distinction drawn between "right to apply for compensation" and "entitlement to compensation". Hon'ble Supreme Court in said case of ***Manjuri Bera (supra)*** has held that "*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.*" It is thus, clear that 'Entitlement to compensation' has been held to be of one who is 'dependent' on the earnings of the deceased.

6. Further, Id. Counsel for the appellant has placed reliance on ***Seema (Supra)***. However, appellant can derive no benefit from the said judgment as in the particular facts of the said case, it was found that claimant therein was '*largely dependent on the earnings of the deceased and were staying with him*'. In the present case, as already noted above, nothing has been shown to indicate any

financial dependence of the appellant upon the deceased. On the contrary, it has been admitted by the appellant that he was living separately from his father in his own house with his family. No doubt Chapter-12 of the Act is a beneficial legislation yet, as cautioned by the Hon'ble Supreme Court in '*State of Haryana Vs. Jasbir Kaur*' Law Finder Doc ID# 64043 and '*Divisional Controller K.S.R.T.C. Vs. Mahadev Shetty*'. (2003) 7 SCC 197, the amount of compensation should be just and reasonable, it should neither be a bonanza nor a source of profit. In case of *KSRTC Vs. Susamma Thomas 1994 Volume-II SCC 176*, the Hon'ble Supreme Court has held that misplaced sympathy, generosity and benevolence cannot be the guiding factor for determining the compensation.

7. In this circumstance, I find no error whatsoever in the reasoning of the learned Tribunal as contained in paragraph 19 of the impugned Award, which reads as follows:

“As per the claim petition, Ishwar Chand was 58 years old at the time of his death and was a hawker. The claimant is his son who is stated to have been 36 years old at the time of the death of Ishwar Chand. He appeared in the witness box as PW1. He has stated that Ishwar Chand was contributing a sum of 15,000/- per month in the family and the family had suffered a huge set-back and financial loss. In the cross-examination, he stated that he got married in the year 2004 and his mother i.e. the wife of Ishwar Chand expired in the year 2003. He also stated that his sister was married and was living with her family in her matrimonial home. He feigned ignorance about the date of birth of his father and stated that he did not have any Aadhaar card or ration card of his father. He admitted that prior to the death of his father, he was living in Ludhiana with his family and had come to Ambala about six months prior to the prior to the death of his father. He also stated that he was living in his own house. No-doubt, in some cases, it has been held that married sons and daughters can also be said to have

been dependent upon their father. However, those are the cases where normally the wife is also alive and not where the deceased is more than 60 years and the claimant is also 36 years old and working. Still further, as mentioned above, it has come in the evidence that the claimant had shifted to Ambala only six months prior to the death of his father Ishwar Chand. It cannot, therefore, be said that Ishwar Chand was contributing 15,000/- per month to the family. Even, the income of Ishwar Chand does not stand proved as there is practically no evidence qua the same. Ishwar Chand can at best, therefore, be presumed to be a labourer and he must have have been earning 8,000-9,000/- per month. This much amount would be sufficient only for his own needs. The claimant, therefore, cannot be said to have been dependent upon the income of deceased Ishwar Chand and no financial loss can be said to have been caused to the family. However, at best the claimant can be said to have suffered some loss of love and affection on account of the death of his father Ishwar Chand. This Court is, therefore, inclined to grant a lumpsum compensation amount of 1,00,000/- on account of loss of love and affection to the claimant. As such, issue no.2 is disposed of accordingly.”

8. I find no error whatsoever in the above, reasoning of the learned Tribunal. In view of the above, the present appeal stands **dismissed**.

9. Pending applications, if any, stand disposed of.

(NIDHI GUPTA)
JUDGE

04.08.2025

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No