

Neutral Citation No. - 2025:AHC-LKO:45621

A.F.R.

Reserved

Court No. - 7

Case :- FIRST APPEAL FROM ORDER No. - 468 of 2011

Appellant :- The Chief Engineer Irrigation Deptt. Lko.And
Another

Respondent :- Ms. Tabassum

Counsel for Appellant :- C.S.C.

Counsel for Respondent :- Rajesh Trivedi, Shakeel Ahmad
Ansari

Alongwith

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U.P.Lko.And Another

Respondent :- Ms. Tabassum

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Hon'ble Jaspreet Singh, J.

1. This is a batch of two appeals filed by the State under Section 173 of the of the Motor Vehicles Act, 1988 (hereinafter referred to as Act of 1988) assailing the award dated 25.02.2011 passed by the Motor Accident Claims Tribunal/Additional District Judge, Court No.13, Lucknow in two Claim Petitions bearing No.292 and 293 of 2009 whereby in a death case in Claim Petition No.292 of 2009, a sum of Rs.2,13,200/- alongwith 6% interest per annum has been awarded whereas in Claim Petition No.293 of 2009, a

sum of Rs.1,16,400/- alongwith 6% interest per annum has been awarded in favour of the claimant-respondents.

2. Facts indicate that on 24.04.2009, Aftab Husain alongwith his son Tanveer Husain was travelling on a motorcycle to visit their relative. When they reached near Bahad Gram Khushalganj, Mohaan Road, Police Station Kakori, the offending Truck bearing number URA 9406 which was being driven rashly and negligently, hit the motorcycle, as a result, both Aftab Husain and his son Tanveer Husain sustained grievous injuries. They were taken to the Trauma Centre at Medical College, Lucknow where during his treatment Aftab Husain expired on 24.04.2009 while his son Tanveer Husain expired during his treatment on 01.05.2009. Both of them were survived by the claimant-respondent Smt. Tabassum (daughter of the Aftab Husain and sister of Tanveer Husain).

3. It is in the aforesaid context that Tabassum instituted two separate claim petitions, one relating to the death of her father which came to be registered as Claim Petition No.292 of 2009 and the other claim petition in respect of her brother Tanveer Husain which was registered as Claim Petition No.293 of 2009. Both the claim petitions were contested by the State who denied the accident and further alleged that it was the deceased who was not careful while driving the

motorcycle and as such on account of their own negligence the accident occurred and not on account of negligence of the Truck bearing number URA 9406.

4. The Tribunal upon exchange of pleadings framed four issues. Parties led their evidence and thereafter the Tribunal after analyzing the evidence recorded a finding that the accident occurred on account of rash and negligent driving of the Truck bearing number URA 9406. It also went on to compute the compensation and granted a sum of Rs.2,13,200/- in relation to the death of Aftab Husain and a sum of Rs.1,60,400/- was awarded on account of death of Tanveer Husain. It is the aforesaid two awards which are under challenge before this Court.

5. Shri Hemant Kumar Pandey, learned Standing Counsel for the State-appellants has vehemently urged that the amount of compensation granted to the respondents is not just and fair. It was urged that the compensation in terms of motor accident is primarily based on the principal of loss of dependency. In case if the dependency is not proved by the claimants, they are not entitled to the compensation beyond the terms of Section 140 of the Act of 1988.

6. The submission is that since the claimant was the married daughter of Aftab Husain hence she cannot be said to be the dependent on her father. Similarly, for the very

same reason the claimant also cannot be treated to be a dependent on her brother. In the given circumstances at best the claimant could have been awarded compensation of a sum of Rs.50,000/- for each of the two deceased in terms of section 140 of the Act of 1988.

7. It is also urged that the Tribunal has erred in giving a larger compensation by noticing the dependency which in the instant case was not applicable, hence two awards deserve to be modified and the amount of compensation deserves to be reduced only to the extent of limit as prescribed under section 140 of the Act of 1988.

8. In support of his submission, he has relied upon the decision of the Apex Court in ***Manjuri Bera v. The Oriental Insurance Company Ltd. and others, (2007) 10 SCC 643***. He has further urged that the decision of the Apex Court in Manjuri Bera (supra) still holds the field and it was followed by the Apex Court in ***Chandra Kala Sharma v. Mohd. Naushad, 2018 SCC OnLine SC 2234***.

9. It is urged that if a claimant did not suffer any loss since she was not a dependent on the deceased, then she can be entitled to compensation but only upto the limit fixed by the no fault liability section and may be some amount can be awarded under the conventional heads. He has also relied upon a recent decision of the Apex Court in ***Deep Shikha v.***

National Insurance Co. Ltd., 2025 SCC OnLine SC 1090

wherein the Apex Court held that once a daughter is married, the logical presumption is that she has no rights on her parent as she is supported by her husband and his family. It is submitted that in Deep Shikha (supra), the Apex Court considered the dictum of the Apex Court in Manjuri Bera (supra) and further noticed that since the appellant no.1 (in Deep Shikha (supra)) was the married daughter, hence the compensation as awarded by the Tribunal to her was reduced to the extent of Rs.50,000/-whereas the claim of the appellant no.2 who was the mother of the deceased her compensation was maintained.

10. Thus, it was urged that in the instant case since the claimant was the married daughter, accordingly she was not a dependent of her father and brother, hence the amount of compensation granted is on the much higher side and the same deserves to be reduced. Consequently, the appeals deserve to be allowed.

11. Shri Rajesh Trivedi, learned counsel for the respondents has urged that the law relating to compensation arising out of motor accidents have undergone vast changes. The compensation as awarded is then primarily based on the principal of dependency but even the legal heirs are entitled to the grant of compensation. He further urged that in terms

of Section 166 of the Act of 1988, the compensation can be claimed by the legal heirs/representatives. However, that does not limit the right of such legal heirs/legal representative to a particular sum. The right to claim compensation vests with the legal heirs/representative and the question depends upon the loss of dependency. The quantum can vary but it does not in any manner suggest that unless a person is dependent either wholly or in part on the deceased only then such compensation can be claimed.

12. It was further urged that in the instant case the claimant was dependent on her father as well as brother by not only being a legal heir but even for the reason that her husband was in Dubai for the purposes of his vocation and the father and brother of the claimant used to provide her with various facilities and amenities and being the daughter she used to visit her parent (as mother of the claimant had already died earlier) hence these circumstances in itself are sufficient to prove dependency and in such circumstances, the award made by the Tribunal cannot be faulted, hence the appeals deserve to be dismissed.

13. The Court had heard the learned counsel for the parties and also perused the material on record.

14. The issue before this Court for consideration is whether a married daughter can be excluded to claim compensation

beyond the prescribed limit as mentioned in Section 140 of the Act of 1988.

15. In order to answer the aforesaid issue, it will first be relevant to notice the decisions cited by the learned counsel for the parties.

16. Learned counsel for the appellants has heavily relied upon the decision of the Apex Court in *Manjuri Bera* (supra). However, this Court is of the view that the said decision of *Manjuri Bera* has been largely misunderstood; inasmuch as it does not lay down any proposition to the effect that a married daughter is not entitled to compensation beyond the prescribed Section 140 of the Act of 1988.

17. In the case of *Manjuri Bera*, the claim petition was filed by the married daughter of Bata Krishna Mondal, an issue was raised before the Apex Court as to whether the married daughter could maintain a claim in terms of Section 166 of the Act of 1988. The Apex Court noticing the provisions of Section 166 and 168 including noticing the definition of the word 'legal representative' as mentioned in Section 2(11) CPC held that the liability under section 140 of the Act of 1988 does not cease in absence of the dependency. The right to file a claim application has to be considered in the background of right to entitlement. However, while assessing

the quantum, the multiplier system is applied because of deprivation of dependency.

18. The Apex Court further held that the multiplier is a measure and there are three stages while assessing the question of entitlement; first the liability of the person who is liable and who is to indemnify the liability; next is the quantification and in this regard Section 166 is in the nature of recovery proceedings. Accordingly, the liability under Section 140 of the Act of 1988 does not cease in absence of dependency. In paragraph-15 of the said judgment, the Apex Court held as under:-

"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. The appeal is allowed to the aforesaid extent. There will be no order as to costs. We record our appreciation for the able assistance rendered by Shri Jayant Bhushan, the learned amicus curiae."

19. From the above, it would reveal that it was held that even if there is no loss of dependency, the claimant, if is, the legal heir or representative, will be entitled to compensation and the quantum of compensation shall not be less than the liability flowing from Section 140 of the Act of 1988. The use of the words that the quantum will not be less then the liability flowing from Section 140 does not mean that it is confined to the limits as provided in Section 140 rather it

has been held that the compensation in such cases cannot be less than the limit as mentioned in Section 140 and does not provide for any upper limit or cap.

20. It will also be relevant to notice that the decision of Manjuri Bera (supra) came up for consideration before the Apex Court in the case of ***National Insurance Company Ltd. v. Birender, (2020) 11 SCC 356.***

21. ***In Birender*** the Apex Court has succinctly noticed the quantum before it in para 10 whereas in paras 13 and 14, the Apex Court has explained the intent and the ratio laid down in the case of Manjuri Bera (supra). For better appreciation, paras 10, 13 and 14 of Birender (supra) is being reproduced hereinafter:-

"10. We have heard Mr Amit Kumar Singh, learned counsel for the Insurance Company (appellant) and Ms Abha R. Sharma, learned counsel for Respondents 1 and 2. The principal issues which arise for our consideration are as follows:

10.1. (i) Whether the major sons of the deceased who are married and gainfully employed or earning, can claim compensation under the Motor Vehicles Act, 1988 (for short "the Act")?

10.2. (ii) Whether such legal representatives are entitled only for compensation under the conventional heads?

10.3. (iii) Whether the amount receivable by the legal representatives of the deceased under the 2006 Rules is required to be deducted as a whole or only portion thereof?

13. In para 15 of Manjuri Bera [Manjuri Bera v. Oriental Insurance Co. Ltd., (2007) 10 SCC 643 : (2008) 1 SCC (Cri) 585] , while adverting to the provisions of Section 140 of the Act, the Court observed that even if there is no loss of dependency, the claimant, if he was a legal representative, will be entitled to compensation. In the concurring judgment of S.H. Kapadia, J., as his Lordship then was, it is observed that there is distinction between "right to apply for compensation" and "entitlement to

compensation". The compensation constitutes part of the estate of the deceased. As a result, the legal representative of the deceased would inherit the estate. Indeed, in that case, the Court was dealing with the case of a married daughter of the deceased and the efficacy of Section 140 of the Act. Nevertheless, the principle underlying the exposition in this decision would clearly come to the aid of Respondents 1 and 2 (claimants) even though they are major sons of the deceased and also earning."

"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."

22. From the above it would reveal that the Apex Court considering this very same issue held that the legal heir/ representative of the deceased is entitled to compensation even if there was no dependency. In the said case, the major sons of the deceased who were not dependent had claimed compensation which was resisted by Insurance Company and in the aforesaid context it was held that the legal heirs were entitled to claim compensation and their right could not be curtailed upto the limit fixed in terms of Section 140 of the Act of 1988.

23. Now in this backdrop, if the decision of the Apex Court in Chandra Kala Sharma (supra) is seen it would indicate that it does not lay down any proposition which is contrary

to what has been held by the Apex Court in Manjuri Bera (supra) and as explained in Birender (supra).

24 In so far as the decision of the Apex Court in Deep Shika (supra) is concerned, it would be noticed that in the case of Deep Sikha (supra) the Apex Court was not appraised of the earlier decision in Birender (supra). This Court hastens to add that there are two other later decisions of the Apex Court in ***Seema Rani and others v. Oriental Insurance Co. Ltd. and others, (2025) SCC OnLine SC 283*** and ***Jitendra Kumar and another Vs. Sanjay Prasad and others, CIVIL APPEAL NO. 710199 of 2025(Arising out of SLP(C) No. 27779/2023)*** which follow the ratio as laid down in Birender (supra).

25. In Jitendra (supra) the Apex Court considered a similar issue regarding the right to claim compensation by a married daughter and relying upon the earlier decision in Birender(supra) and Seem Rani (supra), the Apex Court held as under:-

" 12.The High Court has placed reliance on the judgment of this Court in National Insurance Co. Ltd. v. Birender; (2020) 11 SCC 356 , to observe that the claimant-appellant(s) are legal representatives of the deceased and have a right to apply for compensation. Thereafter, in its discussion, the Court observed that the claimant-appellant(s) have not been shown to be dependents on the deceased and consequently, a deduction of 50% is to be made to determine the compensation to be received by the claimant-appellant(s).

13.In our considered opinion, the view on this issue cannot be faulted. The exposition of law in Birender (Supra) is clear, wherein it was observed as under: "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."

14. Such exposition came to be followed by this Court in Seema Rani and Ors. v. Oriental Insurance Co. Ltd. and Ors.; 2025 SCC Online SC 283, wherein it was observed that the application for compensation, even by married sons and daughters, must be considered, irrespective of whether they are fully dependant or not. In the present case, it cannot be disputed that the claimant-appellant(s) became partner in the consultancy firm run by the deceased. Moreover, it is not in dispute that that the Flour Mill being run by the deceased, is still being run by the claimant-appellant(s). In such a factual circumstance, it cannot be said that the claimant-appellant(s) were financially dependent upon the deceased.

15. Therefore, in view of the above, while the claimant-appellant(s) were not dependent upon the deceased, they are entitled to receive compensation as his legal representatives, in accordance with law. Thus, the deduction towards the loss of personal and living expenses is to be ½ (50 % of the income of the deceased) in accordance with law"

26. Having considered the decisions of the Apex Court as mentioned and noticed hereinabove, it would be clear that a legal heir cannot be deprived of compensation beyond the limits of no fault liability as provided under Section 140 of the Act of 1988 on the ground that the said heir was not a dependent of the deceased.

27. From the meaningful reading of the aforesaid decisions in Birender (supra), Seema Rani (supra) and Jitendra (supra), it would indicate that a legal heir, who may be a married daughter or a major son (married or unmarried), being a legal heir of the deceased is entitled for

compensation. The compensation is to be determined as provided by the Apex Court in the case of ***Sarla Verma (Smt.) and others Vs. Delhi Transport Corporation and another (2009) 6 SCC 121*** which was further approved by the Constitution Bench of the Apex Court in ***National Insurance Company Ltd. Vs. Pranay Sethi and others (2017) 16 SCC 680***. It cannot be stated as a bland proposition that the legal heir if not dependent can only get the amount as provided under section 140 of the Act of 1988 as well as amount as indicated in the case of Pranay Sethi (supra) under the conventional heads. However, while calculating the quantum of compensation, considering the evidence on record, the dependency can be less or more in the sense that in case if there is a married daughter or a major son who may not be dependent (technically) on the deceased but the fact remains that because of the relationship, there would be some dependency and in such cases the deduction on account of dependency which may vary from case to case basis depending on the evidence but it cannot be said that there would be no dependency and the compensation would comprise of only the amount under the no fault liability and amount payable in terms of conventional heads.

28. This Court in light of the facts of the case holds that as the claimant has stated that since her husband was employed abroad hence she used to stay with her parent, (with her father and brother) hence it cannot be said that merely because the claimant was married, she would have no right or that she would not be a dependent. Thus, the findings recorded by the Tribunal cannot be faulted as the Tribunal has taken note of the aforesaid submissions and taking a conservative estimate had granted a compensation of Rs.2,13,200/- on account of death of her father and a sum of Rs.1,60,400/- for the death of her brother, which cannot be said to be exorbitant or unfair.

29. It should always be kept in mind that human life has much value, it would be anomalous to state that a person may lose a dear one or member of the family and merely because the legal representative is not dependent on the deceased hence, he or she would be confined only to the no fault liability amount as prescribed under Section 140 of the Act of 1988 and adding some amount under the conventional heads, this would be a travesty of justice and mocking at a loss of an important human being, due to negligence of another.

30. For the aforesaid reason, this Court finds that the findings recorded by the Tribunal granting compensation to

the claimant cannot be faulted. The main ground as urged by the learned Standing Counsel was in context with the entitlement of a married daughter to claim compensation and no other ground was pressed. The two appeals preferred by the State are without merit and are consequently **dismissed**. Costs are made easy. The award passed in Claim Petition No.292 and 293 of 2009 are affirmed

31. Any amount deposited before this Court shall be remitted to the Tribunal to be released in favour of the claimant as per the award and any short fall shall also be made good with updated interest to the claimant-respondents within 60 days from today. The record of the Tribunal be returned forthwith.

Order Dated:- 6th August, 2025

ank/-