

HIGH COURT OF GUJARAT

ROYAL SUNDARAM ALLIANCE INSURANCE CO LTD

Versus

LEGAL HEIRS OF DECD KANTILAL HARGOVINDAS BHUPTE & 1 OTHER(S)

Date of Decision: 26 November 2021

Citation: 2021 LawSuit(Guj) 4092

Hon'ble Judges: [Niral R Mehta](#)

Case Type: First Appeal

Case No: 1124 of 2013

Subject: Motor Vehicle

Acts Referred:

[Motor Vehicles Act, 1988 Sec 173, Sec 163A](#)

Final Decision: Appeal dismissed

Advocates: [Dakshesh Mehta](#), [Paresh M Darji](#), [Nanavati Associates](#)

Cases Referred in (+): 1

Niral R Mehta, J.

[1] The present First Appeal under Section 173 of the Motor Vehicles Act, 1988 has been filed by the appellant - Insurance Co. (original opponent No.2) challenging, inter-alia, the judgment and award dated 7.3.2013, passed by the MAC Tribunal (Main), Rajkot in MAC Petition No.1401 of 2009, wherein the learned Tribunal has awarded a sum of Rs.2,85,300/- towards the compensation.

Amount	Particulars
Rs.2,80,800/-	Loss of dependency
Rs.4,500/-	Conventional amount
Rs.2,85,300/-	Total

[2] That on 23.9.2009, the deceased was driving Hero-Honda Motorcycle bearing No.GJ-3-CD-4356. That near village Ghuntu on Morbi-Halvad road, the Truck bearing No.GJ-3-W-9150 was parked on the road without any parking signal. Thus, the

deceased dashed with the truck from behind and died. At the time of the death of the deceased, his age was 34 years and was earning Rs.3300/- per month by way grocery business. Thus, the respondents herein - original claimants have approached the learned Tribunal for compensation for the death of their brother, who was unmarried under Section 163-A of the MV Act.

[3] Upon service of notice, the driver, though served, had chosen not to appear before the learned Tribunal. However, the appellant herein - Insurance Co. appeared and filed its written statement at Exh.14. The learned Tribunal, after having gone through the pleadings and the evidence on record, came to the conclusion that the claimants being legal representatives of the deceased, are entitled to the sum of Rs.2,80,800/- under the head of 'loss of dependency', considering the schedule. Further, a sum of Rs.4500/- also came to be awarded as per the schedule. Thus, total sum of Rs.2,85,300/- came to be awarded by the learned Tribunal.

[4] Being aggrieved by the aforesaid, the appellant - Insurance Co. is before this Court by way of present First Appeal.

[5] Mr.Dakshesh Mehta, learned counsel appearing for the appellant - Insurance Co., has submitted that the learned Tribunal has committed an error in not attributing contributory negligence to the deceased as well. It is further submitted that the motorcycle driven by the deceased had dashed with the truck in question, which was stationary on the road side and, therefore, the deceased himself was also negligent in driving the motorcycle.

5.1 It has been further contended by the learned advocate for the appellant that the claim petition is not maintainable, as has been filed by the brother of the deceased and, therefore, requested to allow the appeal by quashing and setting aside the judgment and award passed by the learned Tribunal.

[6] Per contra, Mr.Nisarg Desai, learned counsel for Nanavati Associates for the respondents, submitted that the learned Tribunal was justified in awarding the compensation and thus, the appeal of the Insurance Co. be dismissed. He further submitted that since the claim petition was filed under Section 163-A of the MV Act, negligency on the part of insured cannot be gone into. Mr.Nisarg Desai, learned counsel, also submitted that the claimants are the real brothers of the deceased and they are living jointly. Thus, they are entitled to file the claim petition before the learned Tribunal in their capacity as legal representatives.

[7] Having heard the learned counsel for the respective parties, in my view, the following two questions arise for consideration, viz., (i) Whether the claim petition at the instance of brothers in their capacity as legal representatives of the deceased, can

be maintainable ? and (ii) Whether the learned Tribunal has erred in not considering the contributory negligence on the part of the deceased ?

[8] In my view, before deciding the aforesaid two questions, it would be apt to consider the legal position settled by the Apex Court. Recently, the Apex Court has, in the case of **N. Jayasree & Others v. Cholamandalam MS General Insurance Co. Ltd., rendered in Civil Appeal No.6451**, decided on 25.10.2021, considered the term 'legal representative' by holding as under :

"14. The MV Act does not define the term 'legal representative'. Generally, 'legal representative' means a person who in law represents the estate of the deceased person and includes any person or persons in whom legal right to receive compensatory benefit vests. A 'legal representative' may also include any person who intermeddles with the estate of the deceased. Such person does not necessarily have to be a legal heir. Legal heirs are the persons who are entitled to inherit the surviving estate of the deceased. A legal heir may also be a legal representative.

16. In our view, the term 'legal representative' should be given a wider interpretation for the purpose of Chapter XII of MV Act and it should not be confined only to mean the spouse, parents and children of the deceased. As noticed above, MV Act is a benevolent legislation enacted for the object of providing monetary relief to the victims or their families. Therefore, the MV Act calls for a liberal and wider interpretation to serve the real purpose underlying the enactment and fulfil its legislative intent. We are also of the view that in order to maintain a claim petition, it is sufficient for the claimant to establish his loss of dependency. Section 166 of the MV Act makes it clear that every legal representative who suffers on account of the death of a person in a motor vehicle accident should have a remedy for realization of compensation.

17. It is settled that percentage of deduction for personal expenses cannot be governed by a rigid rule or formula of universal application. It also does not depend upon the basis of relationship of the claimant with the deceased. In some cases, the father may have his own income and thus will not be considered as dependent. Sometimes, brothers and sisters will not be considered as dependents because they may either be independent or earning or married or be dependent on the father. The percentage of deduction for personal expenditure, thus, depends upon the facts and circumstances of each case.

18. In the instant case, the question for consideration is whether the fourth appellant would fall under the expression 'legal representative' for the purpose of

claiming compensation. In Gujarat State Road Transport Corporation, Ahmedabad vs. Ramanbhai Prabhatbhai and Anr. this Court while considering the entitlement of the brother of a deceased who died in a motor vehicle accident to maintain a claim petition under the provisions of the MV Act, held as under:

"13. We feel that the view taken by the Gujarat High Court is in consonance with the principles of justice, equity and good conscience having regard to the conditions of the Indian society. Every legal representative who suffers on account of the death of a person due to a motor vehicle accident should have a remedy for realisation of compensation and that is provided by Sections 110-A to 110-F of the Act. These provisions are in consonance with the principles of law of torts that every injury must have a remedy. It is for the Motor Vehicles Accidents Tribunal to determine the compensation which appears to it to be just as provided in Section 110-B of the Act and to specify the person or persons to whom compensation shall be paid. The determination of the compensation payable and its apportionment as required by Section 110-B of the Act amongst the legal representatives for whose benefit an application may be filed under Section 110-A of the Act have to be done in accordance with well-known principles of law. We should remember that in an Indian family brothers, sisters and brothers' children and sometimes foster children live together and they are dependent upon the bread-winner of the family and if the bread-winner is killed on account of a motor vehicle accident, there is no justification to deny them compensation relying upon the provisions of the Fatal Accidents Act, 1855 which as we have already held has been substantially modified by the provisions contained in the Act in relation to cases arising out of motor vehicles accidents. We express our approval of the decision in Megjibhai Khimji Vira v. Chaturbhai Taljabhagujri and hold that the brother of a person who dies in a motor vehicle accident is entitled to maintain a petition under Section 110-A of the Act if he is a legal representative of the deceased."

19. In Hafizun Begum (Mrs) vs. Mohd. Ikram Heque and Ors. it was held that:

"7. 12. As observed by this Court in Custodian of Branches of Banco National Ultramarino v. Nalini Bai Naique 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 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."

21. Coming to the facts of the present case, the fourth appellant was the mother-in-law of the deceased. Materials on record clearly establish that she was residing with the deceased and his family members. She was dependent on him for her shelter and maintenance. It is not uncommon in Indian Society for the mother-in-law to live with her daughter and son-in-law during her old age and be dependent upon her son-in-law for her maintenance. Appellant no.4 herein may not be a legal heir of the deceased, but she certainly suffered on account of his death. Therefore, we have no hesitation to hold that she is a "legal representative" under Section 166 of the MV Act and is entitled to maintain a claim petition."

[9] The Apex Court has, in the case of [United India Insurance Co. Ltd. v. Sunil Kumar & Others](#), 2019 12 SCC 398, held as under :

"8. From the above discussion, it is clear that grant of compensation under section 163-A of the Act on the basis of the structured formula is in the nature of a final award and the adjudication thereunder is required to be made without any requirement of any proof of negligence of the driver/owner of the vehicle(s) involved in the accident. This is made explicit by section 163-A (2). Though the aforesaid section of the Act does not specifically exclude a possible defence of the insurer based on negligence of the claimant as contemplated by section 140 (4), to permit such defence to be introduced by the insurer and/or to understand the provisions of section 163-A of the Act to be contemplating any such situation would go contrary to the very legislative object behind introduction of section 163-A of the Act, namely, final compensation within a limited time frame on the basis of the structured formula to overcome situations where the claims of compensation on the basis of fault liability was taking an unduly long time. In fact, to understand section 163-A of the Act to permit the insurer to raise the defence of negligence would be to bring a proceeding under section 163-A of the Act at par with the proceeding under section 166 of the Act which would not only be self-contradictory but also defeat the very legislative intention.

9. For the aforesaid reasons, we answer the question arising by holding that in a proceeding under section 163-A of the Act it is not open for the insurer to raise any defence of negligence on the part of the victim."

[10] Considering the aforesaid legal proposition as well as the facts of the present case, in my view, the first question is answered in affirmative in view of the latest pronouncement of the Apex Court in the case of **N. Jayasree (Supra)**. As can be seen

from the evidence and the observations of the learned Tribunal that the deceased and the claimants were living in a joint family, in absence of any evidence to the contrary produced on record. Thus, in my view, the first question about the maintainability of the claim petition at the instance of brothers of the deceased in their capacity as legal representatives is permissible and they are entitled to seek compensation. So far as the second question is concerned, since the claim petition was filed under Section 163-A of the MV Act, the insurer cannot be permitted to raise any defence of negligency on the part of deceased as has been held by the Apex Court in the case of Sunil Kumar (Supra). Thus, the second question has also been held in affirmative.

[11] In view of the aforesaid, the present First Appeal fails and is hereby dismissed with no order as to costs. R & P be sent back forthwith to the concerned Tribunal and the Tribunal is directed to issue account payee cheque in favour of the claimants after due verification.

