

**(2007) 04 CHH CK 0045**  
**In the Chhattisgarh High Court**

New India Assurance Co. Ltd.

APPELLANT

Vs

Smt. Jasinta Kujur and Others

RESPONDENT

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**Date of Decision :** 19-04-2007

**Acts Referred:**

Arbitration and Conciliation Act, 1996 — Section 2  
Civil Procedure Code, 1908 (CPC) — Section 2  
Motor Vehicles Act, 1988 — Section 140, 162, 163A, 165, 166

**Citation :** (2008) ACJ 1946 : AIR 2007 Chh 107

**Hon'ble Judges :** L.C. Bhadoo, J

**Bench :** Division Bench

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## Judgement

L.C. Bhadoo, J.—Heard.

2. This appeal has been preferred by the New India Assurance Company Limited, aggrieved by the award dated 5-12-1995 passed by the Motor Accidents Claims Tribunal, Bastar (Jagdalpur) in claim case No. 10/90 Smt. Jasinta Kujur v. Gurdeep Singh and Ors.

3. Brief facts necessary for the disposal of this appeal are that on 20th February, 1990 at about 3.30 p.m. Egenesh Ekka along with Harish Kujur were going on a motorcycle from their Village: Dhanora to Dugoli. One truck bearing registration No. MBY-9538 was coming from Bijapur opposite side. Driver of the truck was Gurdeep Singh who was driving the truck rashly and negligently. He dashed the truck against the motorcycle TVS bearing registration No. UAU-3168 as a result of which Egnesh Ekka & Harish Kujur, who were on the motor cycle, were thrown on the ground. They sustained grievous injuries on head, chest & ribs as a result of which they succumbed to the injuries sustained by them, on the spot. Wife and children of Egnesh Ekka preferred an accident claim which was registered at serial No. 6/90.

4. As Harish Kujur was bachelor residing with his brother & sister-in-law (Bhabhi) Smt. Jasinta Kujur, therefore, the accident claim was preferred by Roopchand Kujur brother of Harish Kujur & husband of Smt. Jasinta Kujur u/s 166 of the

Motor Vehicles Act, 1988 (for short "the Act, 1988") on the ground that Harish Kujur being bachelor was residing with his brother Roopchand & his sister-in-law and he used to give his earnings to his brother & sister-in-law. During the pendency of that claim, Roopchand Kujur also died, therefore, Smt. Jasinta Kujur applied for substitution and the same was allowed.

5. Case of the claimant was that Harish Kujur was an agricultural labour. Learned Tribunal assessed the daily earning of Harish Kujur Rs. 33/- and held that he was working for 26 days in a month, thereby learned Tribunal assessed the monthly income of Harish Kujur Rs. 858/-. It was further held that he used to spend 1/3rd of the income on himself and remaining Rs. 572/- he used to give to his brother & sister-in-law. Therefore, learned Tribunal assessed yearly dependency of Rs. 6,864/- and multiplier of 10 was applied. Ultimately an award of Rs. 68,640/- was passed by learned Tribunal against the appellant/Insurance Company and further directed to pay the same to Smt. Jasinta Kujur.

6. Mr. Shree Kumar Agrawal, learned Senior Advocate appearing for the appellant argued that Jasinta Kujur was not dependent on Harish Kujur and she was not the legal representative of Harish Kujur, therefore, she was not entitled to file this claim against the Insurance Company.

7. In order to appreciate the point raised by learned Senior Advocate for the appellant it is necessary to have a glance on the provisions of the Act, 1988. The expression "legal representative" has not been defined either in the Act or in the Chhattisgarh Motor Vehicles Rules, 1994. The widest meaning, therefore, can be ascribed to it in terms of Section 2(11) of the Code of Civil Procedure, 1908.

8. Section 166 of the Act provides for filing an application for compensation. Section 166(1) of the Act envisages that

An application for compensation arising out of an accident of the nature specified in Sub-section (1) of Section 165 may be made--

(a) & (b)...

(c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or

(d)...

Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application.

Sub-section (2) of Section 166 of the Act envisages that

Every application under Sub-section (1) shall be made, at the option of the claimant, either to the Claims Tribunal having jurisdiction over the area in which

the accident occurred or to the Claims Tribunal within the local limits of whose jurisdiction the claimant resides or carries on business or within the local limits of whose jurisdiction the defendant resides, and shall be in such form and contain such particulars as may be prescribed:

Provided that where no claim for compensation u/s 140 is made in such application, the application shall contain a separate statement to that effect immediately before the signature of the applicant.

9. Therefore, 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.

Section 168 of the Act reads as follows:

Award of the Claims Tribunal.-- On receipt of an application for compensation made u/s 166, the Claims Tribunal shall, after giving notice of the application to the insurer and after giving the parties (including the insurer) an opportunity of being heard, hold an inquiry into the claim or, as the case may be, each of the claims and, subject to the provisions of Section 162 may make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid and in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be:

Provided that where such application makes a claim for compensation u/s 140 in respect of the death or permanent disablement of any person, such claim and any other claim (whether made in such application or otherwise) for compensation in respect of such death or permanent disablement shall be disposed of in accordance with the provisions of Chapter X.

10. Therefore, 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) of the C.P.C., "legal representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddled 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. u/s 2(1)(g).

12. The Apex Court in the matter of Custodian of Branches of Banco National Ultramarino Vs. Nalini Bai Naique, observed that 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 person would be covered by the expression "legal representative".

13. Further, the Apex Court in the matter Of Gujarat State Road Transport Corporation, Ahmedabad Vs. Ramanbhai Prabhatbhai and Another, observed that 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. The Court further held that

The 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 110B (now Section 166) of the Act 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 110B (now Section 166) of the Act amongst the legal representatives for whose benefit an application may be filed u/s 110-A (now Section 166) 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.

14. The liability u/s 140 of the Act does not cease because there is absence of dependency. 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. In other words, multiplier is a measure. There are three stages while assessing the question of entitlement. Firstly, the liability of the person who is liable and the person who is to indemnify the liability, if any. Next is the quantification and Section 166 is primarily in the nature of recovery proceedings. As noted above, liability in terms of Section 140 of the Act does not cease because of absence of dependency.

15. Section 165 of the Act also throws some light on the controversy. The explanation includes the liability under Sections 140 and 163A.

16. Therefore, in that background where a legal representative who is not dependent 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.

17. The above view finds support from the latest judgment of the Apex Court in the matter of Smt. Manjuri Bera Vs. The Oriental Insurance Company Ltd. and Another, .

18. In the background of the above legal position, if we examine the present case, while deciding issue No. 2, learned Tribunal has held that Jasinta Kujur has stated that deceased Harish Kujur used to give his earnings to her husband and to her, he was residing with them being an unmarried person. Learned Tribunal further held that Harish Kujur used to give some amount out of his earnings to his brother and sister-in-law, therefore, the family members of Harish Kujur have been deprived of the earnings, which Harish Kujur used to earn and give to them. The Tribunal further held that applicant Jasinta Kujur is the only legal representative of deceased Harish Kujur, therefore, it is just and proper to allow the amount to Jasinta Kujur.

19. In view of the above legal position, the definition of "legal representative", as also the principle laid down by the Apex Court in the matters of Custodian of Branches of Banco National Ultramarino Vs. Nalini Bai Naique, , Gujarat State Road Transport Corporation, Ahmedabad Vs. Ramanbhai Prabhatbhai and Another, Smt. Manjuri Bera Vs. The Oriental Insurance Company Ltd. and Another, , I am of the considered opinion that Jasinta Kujur, respondent No. 1 herein, comes within the ambit of legal representative of Harish Kujur as there is evidence that Harish Kujur being bachelor used to reside with Jasinta Kujur & Roopchand Kujur, he used to give his earnings to Jasinta Kujur & her husband and now, on account of the death of Harish Kujur, Jasinta Kujur had suffered a loss assessed by the Tribunal. There is nothing on record to show that Jasinta Kujur herself is earning anything, as such, I do not find any substance in the appeal filed by the Insurance Company, same is liable to be dismissed and it is hereby dismissed. In the facts and circumstances of the case, there will be no order as to costs.

20. Consequently, I.A. No. 2904/1996 stands disposed of.