
(1997) 05 P&H CK 0214
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 84 of 1996

Piara Singh

APPELLANT

Vs

Punjab State and Others

RESPONDENT

Date of Decision : 27-05-1997

Acts Referred:

Hindu Succession Act, 1956 — Section 8
Motor Vehicles Act, 1939 — Section 110A
Motor Vehicles Act, 1988 — Section 166

Citation : (1998) ACJ 493 : (1997) 117 PLR 294 : (1998) 1 RCR(Civil) 19

Hon'ble Judges : Swatanter Kumar, J;K.S. Kumaran, J;H.S. Brar, J

Bench : Full Bench

Advocate : C.L. Verma, for the Appellant; Hemant Kumar Gupta, Addl. AG and Harbhajan Singh, for the Respondent

Judgement

Swatanter Kumar, J.—The Civil revision was admitted for hearing to Full Bench by Hon"ble Mr. Justice R.S. Mongia vide his order dated 17.4.1996, which reads as under :-

"Whether in the presence of Class-I heirs of the deceased under the Hindu Successions Act an applicant for compensation u/s 166 of the Motor Vehicles Act (Section 110-A of the old Act) by an heir of Class II is maintainable or not is one of the primary questions that arises in the present case. According to the learned counsel for respondents Nos. 5 to 8, such an application by any Class II heir in the presence of Class I heirs is not maintainable. In support of his contention, he relies on the decision of a Full bench of this Court in Parkash Chand and Ors. v. Pal Singh and Ors. (1985) 87 P.L.R. 538, and also on a Single Bench's decision of this Court in Hans Raj and Ors. v. Neelam Chopra etc. (1986)99 P.L.R. 92.

On the other hand, learned counsel for the petitioner as well as for the State submit that under the Fatal Accident Act, "the parents" of the deceased which will naturally include the father, who is not a Class I heir, can maintain a petition for compensation as Section 166 of the Motor Vehicles Act read with Section 1-A

of the Fatal Accidents Act enlarges the scope of the legal representatives, who can file a petition. For this, reliance is being placed on a decision of the apex Court in Gujarat State Road Transport Corporation, Ahmedabad Vs. Ramanbhai Prabhatbhai and Another, and a Single Bench judgment of this Court in Gram Panchayat, Mehngrowal v. Auditya Ram and Anr. (1987)92 P.L.R. 656. According to them, the Full Bench judgment was earlier than the judgment of the apex Court. According to me, this point is likely to arise again and again and as such it requires consideration by a larger Bench.

Since the earlier judgment relied upon by the learned counsel for respondents Nos. 5 to 8 is of Full Bench. I admit this revision petition to a Full Bench. Considering the controversy involved in the case. Hon"ble the Acting Chief Justice may consider the feasibility of constituting a Full Bench at an early date.

The M.A.C.T. may proceed with the case, but may not pass the final award."

6. As we have to decide the revision petition itself on merit, it will be appropriate for us to give necessary facts giving rise to the present revision petition. One Jaswinder Singh, Constable No. 1067 while standing on the kucha portion of the road near Police Post, Mankheri, was run over by a speeding bus at about 8.30 P.M. on 2.10.1994. Unfortunately, he died instantaneously. His wife Smt. Baldev Kaur, his minor daughters, namely, Ms. Kuljit kaur, Ms. Daljit kaur and minor son Gurvinder Singh filed a petition u/s 166 of the Motor Vehicles Act before the Motor Accidents Claims Tribunal, Ropar, claiming compensation of Rs. 7,00,000/-.

7. During the pendency of the petition, on 20.10.1995 Piara Singh filed an application for his impleadment in the main petition as claimant. Piara Singh the applicant claimed that he is the father of the deceased Jaswinder Singh and is entitled to receive compensation in that capacity along with other heirs.

8. In opposition to this application reply was filed by the non-applicants. The very locus-standi of the applicant was assailed in the reply and it was stated that in the face of the non- applicants, the applicant has no right to claim compensation. It was also averred that the applicant was not dependent upon the deceased nor was he living with the deceased, consequently the application was liable to be rejected.

9. Learned Motor Accidents Claims Tribunal, found no merit in this application and dismissed the same vide order dated 9.11.1995, which reads as under :-

"9.11.1995 : Present Proxies for counsel for the parties.

The application filed by Piara Singh is also without any merit. because in the presence of the applicant who are class one heirs of the deceased applicant Piara Singh has no right to be imposed as a party in this case. If he has any grouse he may move claim petition separately. To come up for evidence of the claimant on 27.1.1996."

It is this order which has been assailed in the present revision petition. This

petition has been placed for hearing before the Full Bench.

10. In the order dated 17.4.1996 brother R.S. Mongia, J. had formulated the following questions :-

"Whether in presence of Class-I heirs of a deceased under the Hindu Succession Act, an application for compensation u/s 166 of the Motor Vehicles Act (Section 110-A of the old Act) by an heir of Class-II is maintainable or not?

11. We are of the considered view that in order to answer the question posed by the learned judge, we have to first answer the following two questions formulated by us keeping in view provisions of Motor Vehicles Act, 1988, hereinafter referred to as the "Act" :-

(i) What is the meaning of the expression "legal representative" used in Section 166 of the Act (Section 110-A of the old Act)?

(ii) Whether Piara Singh falls within the ambit of the expression "Legal representative" or not?

(iii) If Piara Singh is a legal representative, what would be its effect on the merits of the petition preferred by other deceased?

12. The substantive provisions which enable the applicant filing the claim petition for compensation are regulated by the provisions of Section 166 of the Motor Vehicles Act, 1988. The provisions deals with the cases both of claims arising from injuries to a person, property and case of death. It may be relevant at this stage to refer to the provisions of Section 166 of the Act which reads as under :-

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

(a) by the person who has sustained the injury, or;

(b) by the owner of the property; or

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

(d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be.

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 so joined, shall be impleaded as respondents to the application.

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13. We are primarily concerned with the filing of claim petition where death has

occurred as a result of accident. Clause (c) of Sub-section (1) of Section 166 of the Act provides that an application for compensation arising out of an accident in the case of death may be filed by all or any of the legal representatives of the deceased. Proviso to this Sub-section makes it mandatory that if all the legal representatives of the deceased are not joined as party to the application for compensation, such legal representatives shall be joined as respondents to the application. The application has to be made on behalf of the or for the benefit of all the legal representatives of the deceased. The whole emphasis apparently appears to be on the expression "legal representative" appearing in Section 166 of the Act. The Act does not define the expression "legal representative" in Section 166 of the Act in any of defining Sub-sections of Section 2 of the Act. u/s 176 of the Act, the State Government is empowered to make rules. The State of Punjab in exercise of its powers vested in it by virtue of Section 176 of the Act has framed the Punjab Motor Accidents Claims Tribunal, Rules, 1964 - Under Rule 2(C) of these Rules, it has been stated that the term "legal representative" shall have the same meaning as assigned to it under the Code of Civil Procedure. Sub-section 11 of Section 2 of the CPC defines the expression "legal representative" in the following manner :-

"Legal representatives means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in representative character the person on whom the estate devolves on the death of the party so suing or sued."

The expression "legal representative" has been given in a very wide connotation by the legislature under this procedural law. From bare reading of this provision, one can indicate the classes of persons who would be legal representatives in one form or the other :-

- (i) the person who in law represents the estate of the deceased;
- (ii) any person who intermeddles with the estate of the deceased; and
- (iii) if a party sues or is sued in representative character, the person on whom the estate devolves on the death of the party so suing or sued.

14. Thus a person who in law represents the estate of the deceased or a person who intermeddles with the estate of the deceased would be legal representative within the meaning of the Act. The right to represent the estate of the deceased has to be legally recognisable status, in other words, it must find its origin in law or in the accepted principles settled by virtue of pronouncements. A mere self created right to represent the estate of the deceased may not be sufficient to bring a person within the ambit and scope of definition, but where such right to represent is accepted in law, the person would be a legal representative. The intention of the legislature to give it a wide meaning and spread its coverage to the widest extent is indicated from other category which would be deemed to legal representative of the deceased on the principle of inclusion. The expression "legal representative" need not necessarily be given the same meaning under

various legislations. Under the Law of Succession, the expression used is "legal heir". All legal heirs would be legal representatives, but all the legal representatives may not be legal heirs. Even an executor or administrator of a will would be a legal representative, but in spite of being legal representative, he may not be able to have any advantage or relief under the present Act in the facts of a given case.

15. In the case of Gujarat State Road Transport Corporation, Ahmedabad Vs. Ramanbhai Prabhatbhai and Another, , Hon"ble Supreme Court of India, while examining the expression "legal representative" gave it a very wide meaning and held as follows :-

"The expression "legal representative" has not been defined in the Act. Section 2(11) of the Code of Civil Procedure, 1908 defines "legal representative" as a person who in law represents the estate of a deceased person and includes any person who intermeddles 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. The above definition, no doubt, in terms does not apply to a case before the Claim tribunal but it has to be stated that even in ordinary parlance the said expression is understood almost in the same way in which it is defined in the Code of Civil Procedure. A legal representative ordinarily means a person who in law represents the estate of a deceased person or a person on whom the estate devolves on the death of an individual. Clause (b) of Sub-section (1) of Section 110-A of the Act authorises all or any of the legal representatives of the deceased to make an application for the compensation before the Claim Tribunal for the death of the deceased on account of a Motor Vehicle Accident and Clause (C) of that Sub-section authorises any agent duly authorised by all or any of the legal representatives of the deceased to make it,"

16. The right of file a claim petition or to be impleaded as a party in such a claim petition for compensation under the provisions of this Act, thus, is primarily dependent only on one factor whether such an applicant or petitioner is a legal representative or not. To restrict the meaning of the expression "legal representative" would, to our mind, amount to undermining the legislative intention clear from language of the section. It has to be given a broader meaning so as to prevent injustice to a person who may not be preferential legal heir of the deceased, but may be a dependent upon the deceased. Prior to coming into force of the present Act, the field was governed primarily under the provisions of Fatal Accidents Act, 1855. Section 1-A of the fatal Accidents Act had restricted the kind of persons who could file suits for compensation under the Act. Thus, the Legislature has clearly defined as to what persons could claim compensation on the death of deceased under that Act. The beneficiaries identified in Section 1-A of the Fatal Accidents Act, 1855 would obviously have a right to be promoted as legal representatives for the purposes of the present Act, but the provisions of that Act cannot be read and mean to exclude other legal

representatives of the deceased for the meaning and intent of the expression "legal representatives" under the present Act.

17. A Full Bench of the Patna High Court in the case *Sudama Devi and Others Vs. Jogendra Choudhary and Others*, , expressed its views while explaining the expression "legal representative" as follows :-

"It is plain from Section 2(ii) that the definition of word "legal representative" is wide and inclusive a one and conceives of two distinct categories. Firstly, the heirs or persons, who in law represent the estate of the deceased person. However, at par with them and in a class by itself in any person who intermeddles with the estate of the deceased. Such a person is equally a legal representative. The phrase intermeddler with the estate has come to be a term of art has been construed as one of the widest amplitude. This apart, even the dictionary meaning of the word is one of considerable width."

18. A Bench of Rajasthan High Court in the case of *Anju Behal and Others Vs. Rajasthan State Road Transport Corporation*, while declining to grant maintenance to the mother as she was not dependent upon the deceased and was living separately with her husband though granted a limited compensation. but had observed as under :-

"Any person, though dependent on the deceased, is entitled to make an application for the grant of compensation provided he or she falls within the definition of the term "legal representatives". In order to claim compensation or to come within the term "legal representative", one has to be a heir under the law applicable to the parties, who are Hindu in the present case. So far as the question of dependency is concerned, it should have a basis of rightful claim and the court has to consider that person claiming has a right to claim dependency, i.e. the right to claim for maintenance."

19. A Division Bench of Madhya Pradesh High Court in the case of *State of Madhya Pradesh and Others Vs. Madhukar and Others*, while declining to draw a distinction in the status of the legal representatives as indicated in Class-I and Class-II heirs under the Hindu Succession Act, held that all heirs had the right to move the Court, but compensation would depend upon other factors, while observing as under :-

"So far as the entitlement of the respondents for the claim is concerned, admittedly, the respondent Nos. 1 and 2 are the legal heirs of the deceased. Prashant being Class-I heirs. The others are Class-II heirs. But it has come on record that all the respondents were dependent on the deceased Prashant. This is also the finding of the Claims Tribunal. Nothing is pointed out to disturb that finding. Accordingly we hold that all the respondents are entitled jointly to claim the amount awarded to them."

20. A Bench of Delhi High Court in the case of *Pratap Singh and Others Vs. Shish Pal and Another*, held that father of the deceased son was entitled to the

compensation and rejected the finding of the Tribunal that father of the deceased was not a heir of the deceased under the Hindu Succession Act. The Court awarded compensation to the father as he was found to be dependent on his son.

21. A Division Bench of Andhra Pradesh High Court in the case of Thota Veera Reghavaish and Ors. v. The National Insurance Company Ltd. and Ors. 1993(2) ACC 293 held that the legal representatives of a deceased person would include all the heirs but they cannot claim that on the applicability of the provisions of Hindu Succession Act, their shares in compensation should be divided according to Hindu Succession Act.

22. A Division bench of the Bombay High Court in the case of Maharashtra State Road Transport Corporation v. Tulsabai Tukaram Kadave and Ors., 1990 Accidents Claims Tribunal 523, while following the judgment of the Supreme Court in the case of Gujarat State Road Transport Corporation, Ahmedabad (supra) held as under :-

"Section 110-A of the Motor Vehicles Act provides that only legal representatives of the deceased or the injured persons have the right to claim the compensation. According to him, u/s 8 of the Hindu Succession Act, legal representatives are the persons, who fall in the first category of the heirs, namely, wife, sons, daughters and mother. If there are heirs falling in the first category of heirs, other heirs are excluded. According to him, this was the position obtaining under the Fatal Accidents Act, 1855 and the position would be the same as regards the Motor Vehicles Act. Mr. Kudrolli, the learned counsel for the claimants, on the other hand, invited our attention to the Supreme Court decision in the case of Gujarat State Road Transport Corporation v. Ramanbhai Prabhatbhai 1987 A.C.J. 561 (SC), for the proposition that brothers and sisters can also claim compensation in a given case. We have gone through the above decision. Relevant observations are found in paragraphs 10 and 12 of the judgment. The legal position as laid down by the Supreme Court is :-

"Persons for whose benefit such an application can be made and the manner in which the compensation awarded may be distributed amongst the persons for whose benefit the application is made are dealt with by Section 110-A and Section 110-B of the Motor Vehicles Act and to that extent the provisions of the Motor Vehicles Act do supersede the provisions of the Fatal Accidents Act, 1855 in so far as motor vehicles accidents are concerned. These provisions are not merely procedural provisions. They substantially affect the rights of the parties.

In an Indian family brothers, sisters and brother" 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 Fatal Accidents Act."

The legal position is, thus, well settled in favour of the claimants and, therefore, Mr. Hegde's contention in this decision in Megjibhai Khimji Vira and Another Vs.

Chaturbhai Taljabhai and Others, and hold that the brother of a person who dies in a motor vehicle accident is entitled to maintain a petition u/s 110-A of the Act if he is a legal representative of the deceased."

XX XX XX XX "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 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 u/s 110-A of the Act have to be done in accordance with well-known principles of law."

23. It is clear from the afore-stated decisions of various High Courts and the Hon"ble Apex Court that consistently the meaning given to expression "legal representatives" has received a wide meaning and its amplitude extended to suit the remedy available to persons under various enactments. A person who has a right to represent the estate of the deceased is a legal representative and estate of the deceased includes all his properties movable and immovable, compensation, goodwill and any other legal claim.

24. The only ground on the basis of which the application of the applicant in the present case was rejected by the learned Tribunal was that the petitioners in the main petition were Class-I heirs of the deceased while applicant Piara Singh was a Class-II heir and as such he was not entitled to be impleaded as party. This reasoning as already noticed by us is not sustainable because preferential differentiation in the class of heirs which may be regulated for the specific purpose of a special Act cannot be brought into aid, to frustrate the very definition provided to the term "legal representatives" under the present Act. The object of the Act is to provide opportunity and remedy to all the legal representatives to approach the Court for award of compensation if they are otherwise found to be entitled to receive such compensation by the Tribunal. We cannot comprehend that the provisions of this Act permit exclusion of a legal representative at the thresh-hold of the proceedings. Of course the matter would be different once the Tribunal decided on merits that a particular legal representatives is not entitled to compensation. To maintain a petition is one thing while to succeed in the claim to receive compensation in particular is another thing.

25. The concept of preferential class of heirs cannot be treated as a determining factor for eligibility to maintain a petition under the provisions of this Act. The provisions of Hindu Succession Act are intended to regulate the law of succession in Hindus alone while the present Act operates on a much larger footing and covers the claim by any legal representative of a deceased person, whose death has resulted from a vehicular accident. The definition provided under this Act, thus, cannot be circumscribed by adoption of a definition which itself is a restricted one under the provisions of the Hindu Succession Act. We find no

legislative intent or any other compelling reasons to carve out such an exception to these provisions and to place such a limitation on the definition of the "legal representatives" under this Act.

26. The only condition precedent for maintaining a petition u/s 166 of the Act is that a person so maintaining should be a "legal representatives". Whether he is entitled to compensation or not or any apportionment thereof in face of other legal representatives or due to other supervening circumstances are matters to be determined upon trial and in accordance with law.

27. The present Act is a remedial statute and its object is more settled and need-oriented. In consonance with the settled rule of construction, definition of the terms appearing in such statutes should be understood on its widest import which its language permits and it must receive liberal construction. The object of this Act is to secure payment of compensation to the dependent legal representatives at the earliest and in conformity with the settled principles of law. The relief contemplated by the statute is intended mainly to benefit a class of persons i.e. dependent legal representatives. Thus, such a legislation should be construed broadly and liberally (refer Principles of Statutory Interpretation Sixth Edition Justice G.P. Singh). To construe the expression "legal representative" divorced from the scheme of the Act and its object or in a manner different than what has been indicated by us above, appears to be neither apt nor would it serve any common weal. We do not consider it appropriate to give a narrower meaning to this definition, keeping in view the predominant object, reasons and background which necessitated such an enactment. We are of the view that a narrower interpretation would only be a microcosm in contrast to specific legislative intention to benefit and cover larger section of representatives under the provisions of this Act.

28. In view of our discussion afore-stated we answer questions No.1 and 2 formulated by us together as follows :-

The "legal representatives" is a term of wide meaning and connotation and would have to be given the meaning as given to it under the Code of Civil Procedure. Right to represent backed by law is the basic ingredient before a person to be termed as legal representative. Such wide meaning.....can neither be circumscribed or restricted by the meaning given to this term under other enactments. We are of the considered view that Piara Singh is a legal representative of the deceased and ought to have been impleaded as a party in the proceedings. Answer to these two questions provides an answer to the question formulated by Shri R.S. Mongia, J. as well, that the meaning given to the expression "legal heirs" u/s 8 of the Hindu Succession Act would not control and circumscribe the meaning given to the expression "legal representative" under this Act, as explained by us above.

29. Once Piara Singh is considered as a legal representative, he is entitled to become a party in the claim petition filed by other legal heirs, but this ipso facto

would not entitle the applicant Piara Singh to receive compensation. Whether Piara Singh is entitled to compensation or not is a question which the learned Tribunal would have to decide after complete trial and in consonance with the settled principles governing the subject. In other words the Tribunal will have to decide amongst others the basic question whether applicant Piara Singh was a dependent upon the deceased and if so, whether he is entitled to any compensation? As the present petition was filed at the initial stage itself, neither we call upon nor do we feel it proper to venture to comment anything as to whether the applicant is entitled to any compensation or quantum thereof. Accordingly, we answer question No.3.

30. For the reasons afore-stated we are of the view that the order passed by the learned Tribunal dated 9.11.1995 suffers from an error of jurisdiction apparent on the face of the record and is liable to be set aside. Consequently, we set aside the order dated 9.11.1995 passed by the learned Tribunal and direct that applicant Piara Singh shall be impleaded as a respondent in the claim petition i.e. MACT Case No. 98 dated 16.11.1994 titled as Smt. Baldev Kaur and Ors. v. Punjab State and Ors. and subject to the observations made by us above. The interim order dated 17.4.1996 is vacated and the learned Tribunal is directed to proceed with the matter further in accordance with law expeditiously.