

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Pronounced on :16.08.2022

MA No. 423/2009

Ram Charan Singh

.....Appellant(s)/Petitioner(s)

Through: Mr. Rahul Pant, Sr. Advocate with
Mr. Anirudh Sharma, Advocate.

Vs

Ranjyoti Singh and others

..... Respondent(s)

Through: Mr. Vipin Gandotra, Advocate.

Coram: HON'BLE MR. JUSTICE PUNEET GUPTA, JUDGE

JUDGMENT

1. The learned Motor Accidents Claims Tribunal, Udhampur while deciding the claim petition filed by the appellant-claimant herein decided the issue of alleged rash and negligent act of the driver of the offending vehicle in the accident in favour of the appellant on the basis of the evidence that came on record during the proceedings before the Tribunal. The Tribunal while deciding Issue No.2 regarding the entitlement of the appellant herein for compensation on account of the dependency of the appellant herein qua the deceased who was the daughter of the claimant held the issue against the appellant herein on the ground that the appellant cannot be said to be the dependent upon the deceased in view of what has come on record.

2. The learned Senior counsel appearing for the appellant-claimant has argued that the learned Tribunal has taken a very microscopic view of the matter thereby disentitling the appellant from claiming compensation in the claim petition. The evidence on record was sufficient to hold that the appellant was dependent upon the earning of the deceased daughter.
3. The learned counsel appearing for the Insurance Company has vehemently argued that the appellant cannot be said to be dependant of the deceased daughter in view of the evidence that came on record. There was not a whisper of the dependency factor in the evidence led by the claimant before the Tribunal. The Tribunal has rightly rejected the claim of the appellant in the claim petition.
4. The appellant is the legal heir of the deceased daughter is not in dispute.
5. The learned counsels for the parties have taken the court through the evidence that has come on record in order to make out their respective case.
6. The record of the Tribunal is before the court.
7. It cannot be disputed that the person will not be entitled to compensation only on being the legal heir of the deceased unless other factors entitle such legal heir for compensation.
8. The learned Tribunal while giving its finding on the issue in hand has held that the evidence of the claimant failed to justify his dependency upon the deceased daughter. The Tribunal held that the petitioner in the

claim petition did not claim that he was dependent upon the deceased or entitled to compensation on account of loss of dependency. The Tribunal has referred to the statement of the petitioner wherein he has deposed that the deceased used to pay the petitioner Rs.5000/- per month and she was living with him. The claimant also stated in the statement that he has three daughters and one son and no one except the deceased was employed. It is in the context of this statement of the petitioner that the Tribunal did not find the dependency factor in favour of the claimant.

9. The court has gone through the claim petition filed by the appellant before the Tribunal. The petition claims compensation on account of death of the deceased under different heads. There can be no denying of the fact that when one goes through the averments of the claim petition there is no plea raised in the petition specifically that the petitioner was dependent upon the earning of the deceased daughter. The petition, however, speaks of the deceased being serving in the police department as constable at the time of the accident and the mental shock and agony suffered by the petitioner and his family due to the tragic death of the deceased, who was due to get married in December, 2006. The purpose of the provisions of the Motor Vehicles Act is to provide succour to the persons who are dependent upon the deceased victim who has lost the life in an unfortunate accident. The finer elements of the pleadings which are required to be mentioned in proceedings like the suit if not incorporated in a claim petition filed

under the provisions of the Motor Vehicles Act will not necessarily prove fatal for the claimant. The sum and substance of the claim petition should be gauged and not the phrasing of the claim petition in order to do justice in the case. The pedantic approach in this regard can deprive the petitioner of compensation which may be otherwise due to the claimant. That cannot be the legislative intent behind the provisions of the Motor Vehicles Act.

10. The case in hand is of such a nature where the narrow approach can deprive the rightful claimant of the compensation which may be otherwise due to him but for the reason that he failed to properly plead in the claim petition or explicitly state the things in the statement during the course of evidence. The fact that the petitioner herein has filed the claim petition mentioned the salary of the deceased unmarried daughter and during the course of evidence stating that the deceased was providing her Rs.5000/- per month of her earning to the claimant more than anything else but shows that the petition was filed with the intent that the appellant-claimant was seeking compensation on account of being dependent upon his deceased daughter and had shown dependency upon the deceased daughter through statement though stating only that the deceased was contributing certain sum of money of her earning to the claimant.
11. The court cannot fall in line with the argument of the learned counsel for the Insurance Company that the appellant is not entitled to any

compensation as he has failed to prove his dependency upon the earning of the deceased daughter.

12. In the light of the aforesaid discussion, the finding of the Tribunal in respect of Issue No.2 that the appellant has failed to prove his dependency upon the earning of the deceased daughter and, therefore, is not entitled to any compensation is set aside. As the compensation to which the appellant is entitled to is yet to be determined the same is required to be done by the Tribunal.
13. The case is remanded back to the Tribunal for assessing the compensation in favour of the appellant herein. The parties shall be heard by the Tribunal before the finding on the amount of compensation is passed by it. It is made clear that this court has not recorded any finding on merit qua the compensation amount to which the appellant may be held entitled to.
14. The appeal is allowed subject to the aforesaid terms. The learned counsels of the parties are directed to appear before the Tribunal on 07.09.2022. The Tribunal to expedite the matter.
15. Record of the Tribunal be sent back.
16. Disposed of.

(Puneet Gupta)
Judge

Jammu :
16.08.2022
Pawan Chopra

Whether the order is speaking : Yes
Whether the order is reportable : Yes