

GAHC010009502017



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CRP/5/2017

Farhanaz Hussain,
W/o Late Anowar Hussain,
Vill – Gotlong,
P.O. _ Koliabhomora,
P.S. – Tezpur,
District-Sonitpur, Assam,
Pin-784027.

.....PETITIONER.

Versus

1. Jaytun Nessa,
W/o Md. Samsul Hussain,
Village – Samdhara,
P.O. Naharbari,
District- Sonitpur, Assam,
Pin-784182.
2. National Insurance Co. Ltd.
Represented by its Branch Manager,
Tezpur Branch, Main Road, Tezpur,
P.O Tezpur, District- Sonitpur, Assam
Pin-784001.

.....RESPONDENTS

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH

For the petitioner : Mr. D.K. Medhi,
Mr. M. Choudhury
.... Advocates.

For the respondent no.2 : Mr. R.K. Bhatra,
Ms. A. Borar,
Ms. P. Hujuri. ... Advocates.

Date of hearing : 28.10.2021

Date of judgment : 03.11.2021

JUDGMENT AND ORDER (CAV)

Heard the learned counsel for the petitioner Mr. D.K. Medhi and also heard Mr. R.K Bhatra, the learned counsel appearing for the respondent no.2 Insurance Company. The order dated 16.12.2020 reflects that the service upon the respondent no.1 was duly served and in view of the striking off the name of the respondent no.3, the instant revision petition was ready as regards service. None appeared on behalf of the respondent no.1. Accordingly with the consent of the counsel appearing on behalf of the petitioner and the respondent no.2, the instant petition is being taken up for disposal at this stage.

2. The petitioner had challenged the order dated 05.10.2016 passed by the Member, MACT, Tezpur in MAC Case No.226/2011. By the said impugned order, the Court below held that the petitioner is not the legal heir of Late Anowar Hussain who had expired in the accident for which the proceedings i.e. MAC Case No.226/2011 was initiated by the mother of the deceased Anowar Hussain. It is also relevant to note that vide the said impugned order it was also held that in the event of the petitioner is successful in proving her legal status in a competent Civil Court she would be entitled to have the legal right to seek her share in the compensation amount which might be awarded for the death of Late Anowar Hussain.

3. That facts of the case for the purpose of disposal of the instant petition is that Anowar Hussain (since deceased) on the date of accident i.e. 26.01.2011 was travelling in his newly purchased Mahendra make Bolero vehicle from Guwahati to Tezpur driven by his employed driver Sri Parma Das. The said ill-fated vehicle dashed against the iron barrier of the railway track at Ketekibari on the PWD road leading to Tezpur town and accordingly the said vehicle was badly damaged and Late Anowar Hussain expired. Pursuant to the death of Late Anowar

Hussain, the mother of the deceased filed a claim petition registered as MAC Case No.226/2011 before the Member, Motor Accident Claims Tribunal, Tezpur.

4. During the course of the proceedings before the Court below on 28.11.2014 attention of the Court below was brought to the fact that the deceased was also survived by his wife i.e the petitioner herein and accordingly by the order dated 28.11.2014 the Court below felt that the controversy as regards the non-joinder of the petitioner as a claimant needs to be set at rest prior to starting of the cross-examination in the case. Subsequently vide another order dated 28.07.2015 *prima facie* proof that the deceased Late Anowar Hussain had a wife was brought to the attention of the Court below for which the claimant was directed to furnish the name of the said wife and to implead her as claimant along with the present claimant. Pursuant to the said order dated 28.07.2015 the claimant (respondent no.1 herein) filed an application stating *inter alia* that the dispute as regards the claim of the petitioner to be the wife of the deceased Anowar Hussain is pending in the Court of the District Judge in Title Suit No.9/2013 and Revocation Case Nos.99/2013 and 100/2013 and as such requested that further steps as regards impleading the wife of the deceased as a co-claimant be kept in abeyance till the dispute is resolved in the said proceedings. The Court below vide an order dated 18.08.2015 fixed it for necessary orders. Subsequent thereto on 20.07.2016 the claimant brought to the attention of the Court below that T.S.(S/C) 9/2013, Misc.(S/C) Revocation Case No.99/2013 and Misc. (S/C) Revocation Case No.100/2013 were dismissed and therefore, requested the Court below to proceed with the claim petition by taking the evidence of the claimant witness no.1. On the same date the petitioner preferred a petition under Order I Rule 10(2) read with Section 151 of the CPC to implead the petitioner as one of the co-claimant. The Court below fixed 05.08.2018 for filing objection to the petition filed by the petitioner. Accordingly objections was filed and pursuant thereto by the impugned order dated 05.10.2016 the Court below rejected the prayer of the petitioner for impleadment as a co-claimant primarily on the ground that no documentary evidence has been filed by the petitioner nor the petitioner had approached the Civil Court to have her status declared as the wife of Late Anowar Hussain for which the Court below held that she is not the legal heir of Late Anowar Hussain.

5. I have heard the learned counsel for the petitioner as well as the respondent no.2 as well as have also perused the materials on records including the impugned order.

6. A perusal of the impugned order would go to show that the Court below on the face of it had committed an error in coming to a conclusion that in order to file a claim for compensation under Section 163 of the Motor Vehicles Act, 1988 (for short "the Act") the claimant has to be a legal heir of the deceased person. At this stage it is relevant to mention that Section 166 of the Act provides for filing an application seeking compensation. Sub-Section (1) of Section 166 stipulates who are the persons who can file an application seeking compensation. The said Sub-Section (1) of Section 166 is quoted hereinbelow :

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 not so joined, shall be impleaded as respondents to the application."

7. From a perusal of the above quoted section, it would transpire that an application seeking compensation can be made (i) by the person who has sustained the injury or by the owner of the property or where death has resulted from the accident, by all or any of the legal representatives of the deceased or by any agent duly authorized by the person injured or all or any of the legal representatives of the deceased as the case may be. The first proviso to Sub-Section (1) of Section 166 of the Act stipulates that where all the legal representatives of the deceased have not been 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 respondent to the application. The second proviso to Sub-Section (1) of Section 166 of the Act is however not applicable to the dispute herein.

8. A perusal of the claim petition encloses as Annexure-1 to the petition as well as the objection filed by the Respondent no.1 to the application filed by the Petitioner seeking impleadment enclosed as Annexure-11 to the petition show that the Respondent no.1 had claimed her right to file the application for compensation on the ground that she is a legal representative of the deceased. Now, therefore, the question arises is as to whether the petitioner is also a legal representative of Late Anowar Hussain inasmuch as, the First Proviso to sub-Section (1) of Section 166 of the Act stipulates that in case all the legal representatives are not there on record, the legal representatives who have not so joined shall be impleaded as respondents to the application.

9. Therefore, in order to adjudicate on the legality of the order dated 05.10.2016 it would be relevant to find out as to whether the petitioner can be considered to be a legal representative of Late Anowar Hussin. This aspect assumes importance in view of the fact that for the purpose of computation of the just and fair compensation by applying the principles as laid down by the Supreme Court both in the case of *Sarla Verma vs. Delhi Transport Corporation* reported in (2009) 6 SCC 121 and *National Insurance Company Limited vs. Pranay Sethi* reported in (2017) 16 SCC 680, it is necessary for the Claims Tribunal to find out as to whether the person claiming is a legal representative because in absence of that it would be difficult to fix the amount of deduction which is required to be made while computing the compensation. In that view of the matter it would be relevant for disposal of the instant case to find out as to whether the petitioner is a legal representative and is entitled to be impleaded in the said claim proceedings.

10. The provisions of the Act are framed with the object of providing relief to the victims or their families. It is a beneficial legislation as could be seen from a perusal of the provisions thereof. It aims at providing a just compensation to be determined on the foundation of fairness, reasonableness and equitability. Although determination can never be arithmetically exact or perfect, an endeavor should be made by the Court to award just and fair compensation. As already stated in the judgment of *Sarla Verma (supra)* it was held that

when the deceased was married the deduction towards personal and living expenses of the deceased should be one-third ($1/3^{\text{rd}}$) where the number of dependent family members is between 2 and 3; one-fourth ($1/4^{\text{th}}$) where the number of dependent family members is between 4 and 6 and one-fifth ($1/5^{\text{th}}$) where the number of dependent family members exceeds six (6). If the petitioner taken as a legal representative and a dependent of the deceased and taking into account that the mother is alive, the deduction would be $1/3^{\text{rd}}$ whereas in absence of the petitioner as a dependent the deduction would be $1/2$. It is in the said backdrop the question arises as to whether the petitioner is a legal representative and entitled to the compensation. The term 'legal representative' has not been defined in the Act. However, taking into account the various judgments of the Supreme Court one can deduce there from that the term '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 vest. 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. In other words all legal representatives may not be legal heirs whereas all legal heirs are legal representatives. In this regard paragraph 14, 15, 16 and 17 of the recent judgment of the Supreme Court in the case of *N. Jayasree and Others vs. Cholanmandalam MS General Insurance Company Ltd* reported in *2021 SCC OnLine SC 967* held 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.

15. Indicatively for the present inquiry, the Kerala Motor Vehicle Rules, 1989, defines the term 'legal representative' as under:

“Legal Representative” means a person who in law is entitled to inherit the estate of the deceased if he had left any estate at the time of his death and also includes any legal heir of the deceased and the executor or administrator of the estate of the deceased.”

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.”

11. In view of the above observations, it would be therefore clear that the impugned order rejecting the application of the petitioner on the ground that she is not a legal heir is on the face of it erroneous and liable to be interfered with. More so, when the term ‘legal representative’ is to be given a wider meaning inasmuch as and it would not only include the legal heirs but also those persons who have a right to claim compensation as well as also those persons who intermeddle with the estate of the deceased. The documents on record *prima facie* shows that the Petitioner apart from claiming that she is the wife is also intermeddling with the estate of the deceased and under such circumstances she has a right to seek impleadment as a Respondent in terms with the first proviso to Section 166(1) of the Act. In that view of the matter, I am interfering with the impugned order thereby impleading the petitioner herein as a respondent no.4 in MAC Case No.226/2011 with the liberty to file her written statement in the said proceedings. The parties are directed to appear before the learned Court below on 29.11.2021. The Court below thereupon shall proceed with the matter in accordance with law.

12. The petition stands disposed of accordingly. The interim order passed earlier stands vacated. Taking into consideration that the accident occurred on 26.01.2011 and the claim proceedings is of the year 2011, the Court below is requested to dispose of the matter as expeditiously as possible preferable within a period of 6 (six) months from the date of appearance of the parties.

JUDGE

Comparing Assistant