

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

FAO No. 8142 of 2015 (O&M)

Date of decision: September 12, 2019

Payari Devi and others

...Appellants

Versus

Surinderjit Singh and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Vivek Suri, Advocate,
for the appellants.

Mr. Pardeep Kumar, Advocate
for respondent No.3.

JAISHREE THAKUR, J.

This appeal seeks to challenge the award dated 31.07.2015 passed by the Motor Accident Claims Tribunal, Ambala, wherein appellant No.1 herein has been allowed compensation of ₹ 24,33,284/- on account of death of Bichha Ram.

In brief, the facts are that on 24.06.2014, at about 4.15 a.m., deceased Bichha Ram along with his son namely Dharamvir were going from village Bullana to Ambala City Railway Station on their respective bicycles. It was submitted that Bichha Ram had to go to Jagadhari Workshop on his duty by train. Bichha Ram was riding his cycle on correct left side and at the edge of the road. Bichha Ram was going 15 feet ahead of Dharamvir, who was coming on a separate cycle. It was alleged that an Indica Car bearing registration No.HR41-B-8578 came from Ambala side,

being driven by its driver (respondent No.1) in rash and negligent manner and hit the cycle of Bichha Ram. Due to the impact, Bichha Ram fell down on the road and suffered head injury, besides injuries on leg, abdomen and other parts of the body. Thereafter, respondent No.1 driver could not control his car and went off the road in the pits. The driver came to see the injured, but seeing his critical position, he ran away from the spot while leaving his vehicle at the spot. It was averred that Bichha Ram was taken to General Hospital, Ambala and from there, he was referred to PGI Chandigarh. However, Bichha Ram was declared as brought dead at PGI, Chandigarh, as such, postmortem was conducted at General Hospital, Ambala. It was alleged that the accident took place due to the sole rash and negligent driving of respondent No.1 and consequently, FIR No.119 dated 24.06.2014 came to be lodged with the Police Station, Ambala Sadar. With these averments, claim petition was filed by the widow and the children of the deceased claiming that they were fully dependent on the deceased for their maintenance and livelihood. Compensation to the tune of ₹ 50 lacs along with interest @ 18% per annum was claimed.

The claim petition was contested by the respondents *inter alia* taking preliminary objections that the petition was not maintainable, no cause of action has accrued etc. Issues were framed and thereafter evidence was led by the parties. In order to substantiate the claim, Amar Singh was examined as PW1, Sarita Sharma was examined as PW2 and appellant No.2 Dharamvir was examined as PW3 and also tendered documents. On the other hand, the respondents did not lead oral evidence, however, tendered

documents into evidence.

After scrutiny of the evidence brought on record, the Tribunal held that the accident was the result of rash and negligent driving of respondent No.1 and on assessment of the facts and evidence before it allowed compensation of ₹24,33,284/-, which has been now challenged in the instant appeal.

Learned counsel for the appellants submits that the amount of compensation awarded by the Tribunal is on the lower side and as such the compensation amount deserves to be enhanced.

On the other hand, learned counsel appearing on behalf of respondent No.3—Insurance company submits that adequate amount of compensation has been awarded by the Tribunal and no interference is called for in the instant appeal.

I have heard learned counsel for the parties and perused the impugned award.

The Tribunal, after examining the evidence produced by the respective parties held, that the deceased was 56 years of age and was earning ₹35,622/- per month. The Tribunal held that appellants No. 2 and 3 being 31 and 30 years of age respectively, were not dependent upon the deceased and, therefore, deducted 1/3rd towards personal expenses of the deceased. On the basis of salary slip brought on record, the Tribunal has rightly taken the income of the deceased as ₹35,622/- per month. Similarly, the Tribunal has rightly arrived to the conclusion that the deceased was 56 years of age and applied multiplier of 9. However, the Tribunal has wrongly

deducted 10% of the monthly income towards the income tax whereas, the income tax should have been deducted on the income, after excluding the exempted income of the deceased from tax. Further, increase in income on account of future prospects at the rate of 15% and other conventional heads are required to be reckoned, keeping in view the judgment of the Supreme Court in **National Insurance Company Limited Vs. Pranay Sethi and others 2017 (4) R.C.R. (Civil) 1009**. Therefore, compensation payable to the appellants in this case is re-worked and tabulated as under:-

<i>Sr. No.</i>	<i>Heads</i>	<i>Calculation</i>
(i)	Name of the deceased	Bichha Ram
(ii)	Date of accident	24.06.2014
(iii)	Age of the deceased	56 years
(iv)	Monthly income of the deceased after deducting the income tax as per the income tax slab for the year 2014-15	(₹ 35,622-1479)= ₹ 34,143/- per month
(v)	15% of (iv) is to be added towards future prospects	(₹ 34,143+₹5121)= ₹ 39,264/- per month
(vi)	1/3 rd of (v) above deducted towards personal expenses	(₹ 39,264-₹13088) = ₹ 26,176/- per month
(vii)	Compensation calculated after applying the multiplier of 9	(₹26,176X12X9) = ₹ 28,27,008/-
(viii)	Funeral expenses	₹ 15000
(ix)	Compensation for loss of consortium	₹ 40000
(x)	Compensation for loss of estate	₹ 15000
Total		₹28,97,008/-

As a sequel of my discussion above, the appeal is partly allowed. The award of the Tribunal is modified and the total compensation payable to appellant No.1 only shall be ₹ 28,97,008/- and the amount in

excess over what was awarded will also attract interest @7.5% from the date of the petition till the date of payment.

September 12, 2019
vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No