

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

FAO-2768-2012 (O&M)

Date of decision: 02.04.2019

Bachan Kaur and another

...Appellants

Versus

Raman Bansal and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr. G.S. Sandhu, Advocate
for the appellants.

Mr. Vinod Chaudhri, Advocate for respondent No.3.

H.S. MADAAN, J. (Oral)

On account of death of Nachhatar Singh, aged about 55 years, statedly an agriculturist, as a result of suffering injuries, in a motor vehicular accident, which took place on 06.02.2010 at about 11 AM, within the area of Village Mavi Kalan, District Patiala, due to rash and negligent driving of Esteem car bearing registration No.PB-10-CG-4632 (hereinafter referred to as offending car) by respondent No.1 Raman Bansal, Smt. Bachan Kaur, widow and Sehdev Singh son of Nachhatar Singh had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 against the respondents i.e. Raman Bansal-driver, Shri Balaji Trading Company, Sirhind Road, Bus Stand, Village Baran, Tehsil & District Patiala-owner and United India Insurance Company Ltd., Patiala-insurer of the offending esteem car, claiming compensation to the

tune of Rs.15 lacs. In the claim petition, they had impleaded Gurtej Singh, Jagtar Singh, sons, Paramjit Kaur, Jagpal Kaur and Raj Kaur, married daughters of Nachhatar Singh as proforma respondents.

After contest by respondent Nos.1 to 3, the claim petition was accepted by Motor Accidents Claims Tribunal, Patiala, vide award dated 05.01.2012 and compensation of Rs.5,38,000/- was awarded to the claimants with interest @ 6% p.a., from the date of filing of claim petition till actual realization, payable by respondent Nos.1 to 3 jointly and severally.

Being of the view that the compensation awarded was on the lower side, both the claimants have approached this Court by way of filing the present appeal, praying that the compensation so awarded, be enhanced.

Notice of the appeal was given to the respondents No.1 to 3 who put in appearance through counsel, whereas, issuance of notice to respondent Nos.4 to 8 who are proforma respondents, was dispensed with.

I have heard learned counsel for the parties besides going through the record.

During the course of arguments, both the counsel have stated that the appeal be decided in terms of law laid down by the Constitutional Bench of the Apex Court in judgment **National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009**, I find merit in such request made by counsel for the appellants as well as counsel for insurance company. A perusal of the award goes to show that

on analysis of the evidence adduced before it, the tribunal has taken the age of deceased to be 55 years, his avocation as that of an agriculturist and monthly income to be Rs.6000/- per month on account of managerial and supervisory duties, however, no addition towards future prospects has been made in terms of the judgment referred above. If the deceased was self employed, then an addition of 10% is to be made when he was between age group of 50 to 60 years. Accordingly, doing so, the monthly income of deceased is taken to be Rs.6600/- per month, annual income Rs. 79,200/-. The claimant have been taken to be dependent upon earnings of the deceased, whereas, his other two sons and three daughters being married were not found to be dependent upon the deceased and as a matter of fact, they had not laid any claim before the tribunal in that regard. In view of the ratio of authority **Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr., 2009(3) RCR(Civil) 77**, taking the claimants to be dependents upon the earnings of the deceased, 1/3rd amount has been deducted towards personal expenses of the deceased and no fault can be found with the same. Doing so, the dependency of the claimants comes out to Rs.52800/- (79200 – 26400).

The tribunal has used multiplier of 11. It has been so done correctly. Total compensation is thus worked out to Rs.5,80,800/-.

In view of the judgment **Pranay Sethi (supra)**, the claimants are entitled to get compensation under the conventional heads i.e. Rs.15,000/- on account of loss of estate, Rs.40,000/- towards loss of consortium and Rs.15,000/- as funeral expenses, total Rs.70,000/-. In the instant case, the tribunal has awarded Rs.5000/- on account of funeral

expenses and Rs.5000/- on account of loss of consortium and no amount has been awarded towards loss of estate. Therefore, adding an amount of Rs.70,000/-, the total compensation comes out to Rs. 6,50,800/-. Deducting the compensation awarded by the tribunal i.e. Rs.5,38,000/-, the claimants are found entitled to get an additional compensation of Rs.1,12,800/- (6,50,800 - 5,38,000). The claimants shall be entitled to get interest @ 7.5% per annum from the date of filing of the appeal till actual realization on the enhanced amount. The directions issued by the tribunal with regard to apportionment etc., shall apply to the additional compensation so awarded.

It is stated that appellant/claimant No.1-Bachan Kaur has since died and all her legal heirs are already on record. It being so, with regard to the share of Bachan Kaur in the enhanced compensation, the same shall be disbursed to her children in equal shares, unless, they furnish affidavit relinquishing their share in favour of some particular natural heir of Smt. Bachan Kaur.

The appeal stands allowed with costs.

02.04.2019

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(H.S. MADAAN)
JUDGE

Whether speaking/reasoned :

Yes

No

Whether Reportable :

Yes

No