

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

CR-2158-2020(O&M)

Date of decision: 23.11.2021

Daya Singh Nandal and others

...Petitioners

Versus

Sandeep and others

...Respondents

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

Present: Mr. Anurag Jain, Advocate for the petitioners.

Mr. Sachin Ohri, Advocate for respondent No.3.

H.S. MADAAN, J.

Case taken up through video conferencing.

1. This revision petition is directed against order dated 22.01.2020 passed by Motor Accidents Claims Tribunal, Hisar (for short 'the Tribunal') in case titled as 'Smt. Savitri Nandal Vs. Sandeep and others', vide which the claim petition has been consigned to record room for the reason of the same having been abated on account of death of claimant Savitri Nandal. The revision petition has been filed by Daya Singh Nandal, aged about 79 years, husband, Sandeep Nandal, aged 48 years, son and Anjali Nandal-daughter of Smt. Savitri Nandal-deceased.

2. Briefly stated facts of the case are that, Smt. Savitri Nandal had filed a claim petition under Section 166 of the Motor Vehicles Act on 14.05.2008 against Sandeep-driver, Dharamveer-owner and Bajaj Allianz General Insurance Company Ltd., Hisar-insurer of Alto car bearing

registration No.HR-20M-7297 claiming compensation on account of the injuries suffered by her in a motor vehicular accident, which took place on 13.08.2007, statedly on account of rash and negligent driving of Alto car in question by respondent No.1.

3. On getting notice, all the three respondents appeared and contested the claim petition. Issues on merits were framed. The parties were afforded adequate opportunities to lead evidence. As a result of suffering injuries in the accident, Smt. Savitri Nandal had gone into coma and was in vegetative state with no chance of recovery. She had been examined by Medical Board from the office of Civil Surgeon, Gurgaon and she was found to be 100% disabled. The petition was partly allowed by the Tribunal, vide award dated 12.03.2012.

4. Finding compensation awarded by the Tribunal to be inadequate, the claimant through her husband had preferred an appeal before this Court. Two applications had been moved, one for additional evidence seeking permission for producing and proving documents pertaining to expenses incurred on her treatment. The said application was allowed, vide order dated 03.10.2018 and award dated 12.03.2012 to the extent of assessment of compensation was set aside and the matter was remitted to the Tribunal for reassessment of compensation on the basis of material already on record and petitioners were granted permission to lead additional evidence qua documents sought to be produced/proved by way of additional evidence. After remand, while additional evidence in terms of the order passed by this Court was being led, in the meanwhile, claimant Smt. Savitri Nandal, who was admitted in

Pratiksha Hospital on 18.06.2019 expired on 25.06.2019. According to LRs of Smt. Savitri Nandal as a matter of fact, she had died due to injuries suffered by her in the motor vehicular accident which took place on 13.08.2007. Therefore, necessity arose for moving application for impleading LRs of claimant/deceased Smt. Savitri Nandal to seek amendment of claim petition and such application was filed, which was opposed by insurance company.

5. The Tribunal had rejected the application for impleadment, vide order dated 22.01.2020, directing that petition be consigned to record room having abated on account of death of claimant Smt. Savitri Nandal.

6. This order left LRs of Smt. Savitri Nandal aggrieved and they have filed the present revision petition, which is being opposed on behalf of the insurance company.

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

8. Ordinarily, when a person who had suffered injuries in a road side accident and who had filed a claim petition under Section 166 of the Motor Vehicles Act expires and his/her death has no connection with the injuries suffered in the road side accident then the petition may be taken to be abated being personal in nature, though, the legal representatives may be entitled to some compensation under a few heads like loss of estate etc. However, if death of the injured has nexus with the injuries suffered in the road side accident, then the petition can be pursued by the legal representatives and petition is required to be

adjudicated on merits. This has been so held in the judgment of Apex Court referred to by learned counsel for the petitioners in case titled as **The Oriental Insurance Co. Ltd. Vs. Kahlon @ Jasmail Singh Kahlon (deceased) through his LRs Narinder Kahlon Gosakan & Anr.** in CA-4800-2021 (arising out of SLP(C) No.2873-2021) decided on 16.08.2021, wherein it was held that a motor accident claim does not abate on death of the injured/claimant.

9. Learned counsel for the petitioner has referred to another judgment titled as **Khemchand (D) by LRs & Anr. Vs. Govindram & Ors.** 2006 AIR (MP) 79 by Indore Bench of Madhya Pradesh High Court, wherein it was observed that when during pendency of appeal filed against award of compensation by the Tribunal in an injury case, the appeal does not abate and legal heirs of claimant are entitled to prosecute the appeal for estate of deceased.

10. Before the Tribunal, during the course of evidence of the claimant, Dr. Tarun Sapra was examined as PW-6. He had stated that injured Smt. Savitri Nandal had been referred to Ganga Ram Hospital.

11. PW-8 Dr. Rajiv Ranjan, Neurologist, Sir Ganga Ram Hospital, New Delhi whose statement was recorded on 01.02.2010 had stated that Smt. Savitri Nandal remained admitted in their hospital from 29.08.2007 till date with a road side history of accident. She was not in her senses.

12. Her discharge summary Ex.P254 shows date of admission to be 29.08.2007 and date of discharge as 21.02.2011. She had been discharge for further follow up. She was reported to be in multiple

myoclonic jerks as per her disability certificate issued by the office of Civil Surgeon, Gurgaon. Her disability was assessed to be 100% with observation that her condition was not likely to be improved in future. Thus, evidence was there with the Tribunal to show that she had succumbed to the injuries suffered by her in the motor vehicular accident but the Tribunal clearly misappraised the evidence and misinterpreted while disposing of the claim petition as having abated. Under the circumstances, after death of Smt. Savitri Nandal, her legal representatives should have been allowed to pursue the matter but such request was also not accepted by the Tribunal. Therefore, the impugned order passed by the Tribunal cannot be sustained. The same is set aside and the matter is remanded to the Tribunal with a direction to decide the petition in the light of order passed by this Court on 03.10.2018, directing it to reassess the compensation on the basis of material already on record. However, the parties are given liberty to lead evidence before the Tribunal on the point as to whether death of Smt. Savitri Nandal was on account of injuries suffered by her in the motor vehicular accident, which took place on 13.08.2007, if so, the effect thereof on assessment of compensation. Whereas, the findings qua other issues are not being interfered with

13. The parties through counsel are directed to appear before the Tribunal on 10.12.2021. Since the matter is quite old, the Tribunal may give short adjournments and complete the entire exercise preferably within a period of 03 months from the date of receipt of copy of this

judgment there. The direction already issued by this Court while disposing of FAO-5398-2012 granting permission to lead additional evidence qua the documents sought to be produced/proved by way of additional evidence shall remain as such.

14. With abovesaid observations, the revision petition stands disposed of accordingly.

15. Lower Court record be sent back immediately.

23.11.2021
sumit.k

(H.S. MADAAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No