IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 3203 of 2005 (O&M)
Date of decision : May 16, 2016

Hum Bhadur and another,
...... Appellants

v.

Ishwar Singh Burray and others,
...... Respondents

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CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

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Present : Mr. Namit Sharma, Advocate
for the appellants.

Mr. DP Gupta, Advocate
for respondent No.3-Insurance Company.

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1. **Whether Reporters of Local Newspapers may be allowed to see the judgment ?**
2. **To be referred to the Reporters or not ?**
3. **Whether the judgment should be reported in the Digest ?**

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Ajay Tewari, J (Oral)

This appeal has been filed for enhancement of compensation by the claimants for the death of Chander Bhadur @ Rattan Bhadur. Brief facts are that on 21.10.2003, Chander Bhadur @ Rattan Bhadur along with Gian Chand Bhadur, was going towards Meeran Ghati on a bicycle and when they reached near Beri Udyog and were just to cross the road, a tractor trolley, being driven by respondent No.2 rashly and negligently and coming on the wrong side of the road, struck against the bicycle. As a result of this accident, both the cyclists fell down on the road and received multiple injuries, and Chander Bhadur died on the same day. The Tribunal held respondent No.2 responsible for causing the accident. Income of the deceased was assessed as ₹2400/- per month and multiplier of 17 was applied. Besides this, a sum of ₹ 4500/- was awarded for funeral expenses, transportation and loss to estate.

Counsel for the appellants has argued that the Tribunal erred in assessing the income of the deceased. As per the relevant notification, the minimum wages on the date of accident were ₹ 2600/- per month and not ₹ 2400/-. I accept this to be correct.

Counsel for the Insurance Company, however, states that in the present case, multiplier has been taken only as per the age of the deceased, whereas it should have been fixed as per the age of the mother of the deceased. As regards application of multiplier, this Court in Nanak Singh and another v. State of Punjab and another, FAO No.5181 of 2010, decided on 17.1.2014, this Court held as follows :-

> "..........Keeping in view the conflicting decisions of the Hon'ble Supreme Court and taking support from the decision of Division Bench of our High Court in United India Insurance Company Limited v Raj Rani 1998 (1) ACJ 175, in my considered view, the age of the deceased as well as the age group of the claimants is required to be taken into consideration while adopting a multiplier for determining the dependency to award compensation to the claimant."

In the present case, the age of the deceased was 20 years, while the age of the mother stated to be between 45-50 years. Consequently, multiplier of 15 would be appropriate in this case.

Counsel for the appellants has further argued that the Tribunal erred in giving the deduction of 3/4 , whereas it should have been only half. I find this also to be correct.

Counsel for the appellants has further argued that only a sum of

₹ 4500/- has been awarded for funeral expenses, transportation and loss of love and affection. I find this to be correct and award ₹ 70,000/- more on these accounts, and for loss of love and affection to appellant No.2.

Counsel for the appellants has also argued that in one case reported as Kalpanaraj and others v. Tamil Nadu State Transport Corporation, 2014(2) RCR (Civil) 876, the Supreme Court has granted amounts towards loss of estate and towards loss of expectation of the life. I find that the said amounts were awarded in the following terms:-

> "15. Apart from this, we award ₹ 1,00,000/- towards loss of estate and ₹ 1,00,000/- towards loss of expectation of the life of the deceased. We also award a sum of ₹ 50,000/- for funeral expenses and cost of litigation. Therefore, a total sum of ₹ 14,51,016/- which is rounded off at ₹ 14,51,000/- is awarded to the appellants-claimants."

The above decision was considered by this Court in FAO No.6803 of 2011, Sanjida and others vs Sanjay Kumar and others, decided on 11.1.2016, and held as follows :-

> "8. In India, the situation is far worse. Personal claims do not survive to the representatives under the Scheme of Section 306 of the Indian Succession Act except when injuries result in death. The loss due to bereavement is better understood in India as a loss of consortium to the wife or of love and affection to the child or a parent. A provision for loss of expectation in the case of death is unknown to law and I will take that a provision so made in the Kalpanaraj's case (supra) was in exercise of the power that the Supreme Court has under Article 142 of the Constitution and cannot be said as a law binding for the subordinate courts. A certainty ought to prevail in the subordinate courts to apply parameters which are legally tenable. What is possible for the Supreme Court to do in the interest of justice under Article 142 of the Constitution cannot be mindlessly applied without seeing the particular circumstances and the compensation that could be assessed. I will not, therefore, also take the judgment in Kalpanaraj's case (supra) as laying down any proposition of law in case of death that there should also be a provision made for loss of expectation of life, apart from loss of dependency, loss of consortium and love and

> affection. An expectation of life which gets curtailed is at all times translated in terms of the contribution to the family and the loss that is occasioned by consortium withdrawn and the love and affection unexpressed. If they are provided for sizably in monetary terms as contributions to the family and also as loss of consortium and love and affection, there is no further scope for making a provision for any loss of expectation of life. I will understand that if such a claim for loss of expectation of life were to be at all times considered, it must be taken as having been absorbed, while addressing the claim for loss of dependence, consortium and love and affection."

In the circumstances, the decision in Kalpanaraj's case (supra) is held to be not applicable to the facts and circumstances of the present case.

The enhanced amount would carry interest @ 8% pa from the date of application till the date of payment. It transpires that appellant No.2, the mother, would be now approximately 60 years old. In the circumstances, the entire enhanced amounts shall be put in a Fixed Deposit in any nationalized bank for three years, on which appellant No.2 shall be entitled to quarterly interest.

This appeal stands disposed of.

(AJAY TEWARI)
JUDGE

May 16, 2016
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