IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 2792 of 2015 (O&M)
Date of decision : 05.09.2017

National Insurance Company Limited
...Appellant

versus

Chander Kalan and others
...Respondents

CORAM : HON'BLE MR. JUSTICE RAJIV NARAIN RAINA.

Present : Mr. R.C. Kapoor, Advocate
for the appellant.

Mr. Raminder Chouhan, Advocate
for respondent Nos. 1 & 2.

RAJIV NARAIN RAINA, J. (ORAL)

There is sufficient proof of age of the deceased in the pension orders (S/542064/90) as the date of birth is recorded as 05.03.1958. This appears to be a conclusive proof which Motor Accident Claims Tribunal, Bhiwani (in short 'Tribunal') appears not to have set his eyes on.

The Tribunal applied the multiplier of 7 taking the age of the deceased as 62 from the post-mortem report. The accident occurred on 05.08.2013 and the victim suffered from injuries received in the accident and died few days later while undergoing treatment, this would make him 55 years 5 months old at the time of accident. Where the age of the victim is between 51-55 years, the applicable multiplier would be 11 since he had not crossed 56 at the time of death. For this, learned counsel for the respondent sites Sarla Verma and others Vs.

Delhi Transport Company and another, 2009 (3) RCR (civil) 77. Learned counsel for the respondents makes an oral request under Order 41 Rule 33 CPC to apply the correct multiplier as per law which would automatically resulted in increase of compensation.

Accordingly, the appellant is held entitled to compensation by adopting multiplier of 11 instead of 7. Learned counsel for the respondent sites of decision of Hon'ble Supreme Court to contend that Order 41 Rule 33 CPC enables the Appellate Court to pass any order which ought to have passed by the trial Court and to make such further order as the case may require, even after the respondent did not file any appeal or cross-objection. This power is entrusted to the Appellate Court to enable it to do complete justice between the parties.

Since the respondent's request has been accepted, it will be treated as though he is in appeal and in the light of this Mr. Kapoor's contention is noticed that the daughter of the deceased was 29 years of age and married and has been already awarded Rs. 1, 17, 536/- (remaining 6 lacs to the widow) does not deserve to be granted such compensation as the married daughter cannot be said to be dependent on the deceased.

The contention is accepted and that part of the award is modified. The second contention of learned counsel for the appellant is with regard to the dependancy which has been worked out 2/3rd while it should be 50% given that the widow is left alone with family pension from Indian Army in a sum of Rs. 11,000/- per month. There is a merit in this contention and the dependancy will be read as 50% instead of $2/3^{rd}$ and fresh calculations be made. The income of the deceased could not be disputed because he was a government servant drawing pension at the time of death.

The Tribunal has, however, not granted any compensation towards loss of love and affection for the daughter even though married and she deserves to be awarded an amount for loss of love and affection for her father's death. Since the widow was getting more than the amount which the deceased was getting and there was no financial loss, as though no amount should be awarded on this service, the argument is misplaced because pension increases by revisions which are automatic and periodical.

Resultantly, the appeal is partly allowed and the award of the Tribunal is modified to the above extent.

(RAJIV NARAIN RAINA)
JUDGE

September 5, 2017
kv

Whether speaking/reasoned : YES/NO
Whether reportable : YES/NO