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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RA-CR NO. 30 OF 2022 IN
FAO NO. 535 OF 2022

DATE OF DECISION : 28.04.2022

The oriental Insurance Company Limited …Applicant

Versus

Jaswinder Kaur and others …Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. R. K. Bishamboo, Advocate,
For the applicant/appellant.

ARUN MONGA, J. (ORAL)

CM-4916-CII OF 2022

Allowed, as prayed for.

RA-CR-30 OF 2022 (O&M)

This is an application seeking review of order dated 18.02.2022 passed by this Court.

2. Learned counsel for the applicant has drawn my attention to the findings rendered by learned Tribunal qua the age of deceased while deciding Issue No.2 which are, *inter alia*, as below:

> "8. *Onus to prove this issue was upon the claimants, Claimant No.1 Jaswinder Kaur herself stepped into the witness box as PW1 and she reiterated the version put-forth by her in the claim petition. As far as the age of deceased is concerned, the claimants have mentioned the age of deceased in the claim petition as well as in the affidavit of PW1 as 45 years and even in the post mortem report Ex.P5, age of deceased is also mentioned as of 45 years. No other document with regard to the age of deceased has been produced on record by the claimants. As such in these circumstances, the age of deceased is taken to be as 45 years at the time of accident/death for the purpose of disposal of this petition*."

3. Perusal of the above shows that the Tribunal after going through the evidence adduced, gave a conclusive finding that age of the deceased was 45 years.

4. Learned counsel for the applicant argues that claimants on their own volition had produced the insurance policies contained at Annexures A-5 and A-6 wherein date of birth of the deceased is recorded as 28.06.1973. In the premise, he argues that age of the deceased ought to have been considered as 46 and multiplier of 13 be applied instead of 14, which would have decreased the amount of compensation by Rs.2,40,000/-.

5. At this stage, I am not inclined to interfere in the findings rendered by the learned Tribunal below. It was open to the insurance company to refute and/or cross examine PW1 and/or confront the witness with the insurance policy wherein the age of deceased was recorded as 28.06.1973. In any case, date of birth seems to have been recorded by the representative of insurance company since the deceased was an illiterate auto mechanic and would not have known if there were a mistake in what was being filled in by the insurance agent. Even otherwise, having perused the award, I am of the opinion that if the case is reopened on merits in the review jurisdiction, there is all likelihood of the compensation being enhanced. However, no cross appeal was/has been filed by claimants. Since I have already dismissed the appeal, the review application is dismissed simplicitor, in order to avoid unnecessary further litigation.

7. Pending applications, if any, also stand disposed of.

APRIL 28, 2022 **(ARUN MONGA)**
Shalini **JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No