

SAIRA BANO & ORS. Appellants
Through : Mr. Amit Kumar Pandey, Adv.

versus

NARAIN & ORS. Respondents
Through : Mr. R.N. Sharma, Adv.

CORAM :-
THE HON'BLE MR. JUSTICE J.R. MIDHA

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| 1. | Whether Reporters of Local papers may be allowed to see the Judgment? | YES |
| 2. | To be referred to the Reporter or not? | YES |
| 3. | Whether the judgment should be reported in the Digest? | YES |

JUDGMENT (Oral)

1. The appellants have challenged the award of the learned Tribunal whereby compensation of Rs.10,99,000/- has been awarded to the appellants. The appellants seek enhancement of the award amount.

2. The accident dated 6th September, 2004 resulted in the death of Ashaqin @ Ashkeen. The deceased was survived by his widow, three daughters, two sons and parents who filed the claim petition before the learned Tribunal.

3. The deceased was aged about 37 years at the time of the accident and was carrying the business of handicrafts. The learned Tribunal took the income of the deceased to be Rs.1,00,000/- per annum according to the Income Tax Return for the year 2002-2003, deducted 1/3rd towards the personal expenses of the deceased and applied the multiplier of 16 to compute the loss of dependency at Rs.10,72,000/-. The learned Tribunal has awarded Rs.2,000/- towards funeral expenses and Rs.25,000/- towards mental pain and agony suffered by the appellants. The learned Tribunal has awarded total compensation of Rs.10,99,000/- to the appellants.

4. The learned counsel for the appellants have urged the following grounds at the time of hearing of this appeal:-

- (i) The deduction towards the personal expenses of the deceased be reduced from 1/3rd to 1/5th.
- (ii) The future prospects of the deceased be taken into consideration.
- (iii) The compensation be awarded for loss of love and affection, loss of estate and loss of consortium.
- (iv) The rate of interest be enhanced from 6% per annum to 7.5% per annum.

5. With respect to the personal expenses of the deceased, it is well settled by the recent judgment of the Hon'ble Supreme Court in the case of **Sarla Verma Vs. Delhi Transport Corporation, 2009 (6) Scale 129** that the personal expenses of the deceased be taken to be 1/5th

where the deceased has left behind more than six dependents.

6. Following the aforesaid judgment of the Hon'ble Supreme Court, the personal expenses are reduced from 1/3rd to 1/5th. With respect to the future prospects, the Hon'ble Supreme Court has taken a view that the future prospects should be taken into consideration where the deceased has a permanent job. The future prospects in respect of self-employed person is not permitted by the aforesaid judgment and, therefore, the future prospects are declined to the appellants.

7. The learned counsel for respondent No.3 submits that the multiplier be reduced from 16 to 15. The learned Tribunal has applied the multiplier of 16 according to the Second Schedule of the Motor Vehicles Act. Though the multiplier at the age of 37 as per the judgment of the Hon'ble Supreme Court in the case of **Sarla Verma vs. DTC** (Supra) is 15, in the peculiar facts and circumstances of this case, the multiplier of 16 is not disturbed. However, this case shall not be treated as a precedent with respect to the multiplier adopted.

8. The learned Tribunal has not awarded any compensation for loss of love and affection, loss of estate and loss of consortium. However, the learned Tribunal has awarded Rs.25,000/- on account of mental pain and agony suffered by the appellants which is treated to be towards

compensation on account of loss of love and affection. Rs.10,000/- is awarded towards loss of estate and Rs.10,000/- is awarded towards loss of consortium.

9. Taking the income of the deceased to be Rs.1,00,000/- per annum, deducting 1/5th towards the personal expenses of the deceased, applying the multiplier of 16, adding Rs.2,000/- towards the funeral expenses, Rs.25,000/- towards loss of love and affection, Rs.10,000/- towards loss of estate and Rs.10,000/- towards loss of consortium, the total compensation computed to be Rs.13,27,000/- [(Rs.1,00,000 X 4/5 X 16) + Rs.2,000 + Rs.25,000 + Rs.10,000 + Rs.10,000). The learned Tribunal has awarded interest @6% per annum which is enhanced to 7.5% per annum from the date of filing of the petition till realization.

10. The appeal is allowed and the award amount is enhanced from Rs.10,99,000/- to Rs.13,27,000/- along with interest @7.5% from the date of filing of the petition till realization.

11. The enhanced award amount along with interest be deposited by respondent No.3 with UCO Bank, Delhi High Court Branch A/c Saira Bano by means of a cheque through Mr. M.M. Tandon, Member-Retail Team, UCO Bank Zonal, Parliament Street, New Delhi (Mobile No. 09310356400) within 30 days.

12. The order with respect to the disbursement of the award amount shall be passed after examining the

appellants who are directed to remain present in Court on the next date of hearing.

13. List on 18th December, 2009.

14. Copy of this order be given 'Dasti' to learned counsel for both the parties under signature of Court Master.

J.R. MIDHA, J

NOVEMBER 16, 2009

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