

+ MAC.APP.No.588/2005Date of Decision: 13th July, 2009

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SAROJ & ORS. Appellants
Through : Mr. O.P. Mannie, Adv.

versus

HARISH CHANDER & ORS. Respondents
Through : Mr. Amit Kumar Pandey,
Adv. for R-3.

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.4,66,400/- has been awarded to the appellants. The appellants seek the enhancement of the award amount.

2. The accident dated 25th June, 2003 resulted in the death of Mahender. The deceased was survived by his widow, two minor children and parents who filed the claim petition before the learned Tribunal.

3. The deceased was aged 35 years at the time of the accident and he owned a tea stall and was earning Rs.5,000/-

per month. However, in the absence of sufficient proof, the learned Tribunal took the minimum wages of Rs.2,784/- in respect of the unskilled worker and deducted 1/3rd towards personal expenses of the deceased and applied the multiplier of 16 to compute the loss of dependency at Rs.3,56,352/-. Rs.20,000/- has been awarded to each of the claimants towards the emotional loss and Rs.10,000/- towards the funeral expenses. The total compensation awarded is Rs.4,66,400/-.

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

(i) The increase in minimum wages due to inflation and increase in price index has not been taken into consideration by the learned Tribunal.

(ii) The personal expenses of the deceased be taken to be 1/4th instead of 1/3rd considering that the deceased left behind five dependants.

5. The learned Tribunal has taken the minimum wages of Rs.2,784/- per month as the income of the deceased according to the minimum wages. It is well settled by catena of judgments, namely, **Kanwar Devi vs. Bansal Roadways, 2008 ACJ 2182, Lekh Raj vs Suram Singh, 2007 ACJ 2165, National Insurance Company Limited vs. Renu Devi III (2008) ACC 134** and **UPSRC vs. Munni Devi**, MAC.APP.No.310/2007 decided on 28.07.2008 that the minimum wages gets doubled over a period of 10 years due

to inflation and increase in price index and, therefore, the judicial notice be taken of the increase in minimum wages by taking average of the minimum wages and its double. The income of the deceased is thus taken to be Rs.4,176/- (Rs.2,784 + Rs.5,568/2).

6. The deceased has left behind the widow aged 34 years, two minor children aged 7 and 11 years and parents aged 52 and 57 years. It has been held by the Hon'ble Supreme Court in the case of **Sarla Verma Vs. Delhi Transport Corporation, 2009 (6) Scale 129** that $\frac{1}{4}^{\text{th}}$ be deducted towards personal expenses of the deceased who has left behind more than three dependants. The personal expenses of the deceased are, therefore, taken to be Rs.3,132/- (Rs.4,176 – Rs.1,044). The appellants are entitled to the loss of dependency of Rs.6,01,344/- (Rs.3,132 x 12 x 16)

7. The learned Tribunal has awarded a sum of Rs.20,000/- to each of the five claimants towards the emotional loss and Rs.10,000/- towards funeral expenses. There is no provision for awarding compensation for emotional loss and, therefore, the compensation of Rs.20,000/- to each of the claimants (total Rs.1 lakh) awarded by the learned Tribunal is treated as compensation for loss of dependency and is adjusted in the compensation awarded above.

8. The learned Tribunal has not awarded any compensation for loss of love and affection, loss of

consortium and loss of estate. Rs.20,000/- is awarded for loss of love and affection, Rs.10,000/- towards loss of consortium, Rs.10,000/- towards loss of estate and Rs.10,000/- for funeral expenses. The appellants are entitled to compensation of Rs.6,51,344/- (Rs.6,01,344 towards loss of dependency + Rs.20,000/- towards loss of love and affection, Rs.10,000/- towards loss of consortium, Rs.10,000/- towards loss of estate and Rs.10,000/- towards funeral expenses).

9. The appeal is allowed and the award amount is enhanced from Rs.4,66,400/- to Rs.6,51,344/- along with interest @ 9% per annum from the date of the filing of the petition till the date of payment.

10. The shares of the appellants in the award amount shall be as under:-

Appellant No.1	-	60%
Appellant No.2 to 5	-	10% each

11. The respondent No.3 is directed to deposit the award amount with UCO Bank, Delhi High Court Branch within 30 days. The deposit be made by means of an cheque drawn in the name of UCO Bank A/c Saroj, Delhi High Court Branch, New Delhi.

12. Upon the aforesaid amount being deposited, the UCO Bank is directed open Savings account as well as fixed deposit account in the names of the appellants. UCO Bank is directed to transfer a sum of Rs.25,000/- in the Saving

account of appellant No.1. The shares of appellants No.4 and 5 be released to them by transfer of the amount to the Savings Account. The remaining share of appellant No.1 and the shares of appellants No.2 and 3 be kept in fixed deposits for the following periods:-

Appellant No.1	-	FDR in respect of 60% share minus Rs.25,000/- for a period of five years.
Appellant No.2	-	FDR in respect of 10% share for a period of three years.
Appellant No.3	-	FDR in respect of 10% share for a period of five years.

13. The interest on all the aforesaid three fixed deposits shall be paid monthly by automatic credit of interest in the Savings Account of appellant No.1.

14. Withdrawal from the aforesaid account shall be permitted to appellant No.1 after due verification and the Bank shall issue photo Identity Card to appellant No.1 to facilitate identity.

15. No cheque book be issued to appellant No.1 without the permission of this Court.

16. The original Fixed Deposit Receipts shall be retained by the Bank in the safe custody. However, the original Pass Books shall be given to appellant No.1 along with the photocopy of the FDRs.

17. The original Fixed Deposit Receipts shall be handed over to the appellants at the end of the fixed deposit period.

18. No loan, advance or withdrawal shall be allowed on the said Fixed Deposit Receipts without the permission of this Court. However, the appellants are granted liberty to approach this Court for withdrawal of amount at the time of marriage of appellants No.2 to 4.

19. Half yearly statement of account be filed by the Bank in this Court.

20. On the request of the appellants, the Bank shall transfer the Savings Account to any other branch of UCO Bank in Delhi according to the convenience of the claimants.

21. The appellant shall furnish all the relevant documents for opening of the Saving Bank Accounts and Fixed Deposit Accounts to Mr. M.M. Tandon, Member-Retail Team, UCO Bank Zonal, Parliament Street, New Delhi.

22. Copy of the order be given dasti to counsel for both the parties under the signatures of the Court Master.

23. Copy of this order be also sent to Mr. M.M. Tandon, Member-Retail Team, UCO Bank Zonal, Parliament Street, New Delhi through the UCO Bank, High Court Branch under the signature of Court Master.

J.R. MIDHA, J

JULY 13, 2009

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