

+ MAC.APP.No.273/2006Date of Decision: 8th December, 2009

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RAM PYARI ANAND & ORS Appellants
Through : Mr. Anil Kumar Gupta and
Mr. Vineet Hans, Advs.

versus

NATIONAL INSURANCE CO LTD & ORS Respondents
Through : None.

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)**CM Nos.7765-67/2008**

1. The delay in filing of the application for substitution of the legal representatives of Ram Pyari Anand is condoned.
2. Appellant No.1, Ram Pyari Anand expired on 8th August, 2006 and her share has devolved upon appellants No.2 to 5 who are already on record and are substituted in place of deceased-appellant No.1.
3. CMs stand disposed of.

MAC.APP. 273/2006

1. The appellants have challenged the award of the learned Tribunal whereby compensation of Rs.2,33,600/- has

been awarded to the appellants. The appellants seek enhancement of the award amount.

2. The accident dated 28th January, 2005 resulted in the death of Madan Mohan Anand. The deceased was survived by his widow, two sons, one daughter and mother who filed the claim petition before the learned Tribunal.

3. The deceased was aged 59 years at the time of the accident and was carrying on the business of supply of sanitary fittings. The deceased was having his own shop at Hauz Quazi, Peepal Mahadev in the name of M/s Sandeep Sanitation and he was earning Rs.10,000/- per month. The widow of the deceased appeared in the witness box and proved the income of the deceased by Income Tax Return – Ex.PW1/21. PW-1 also proved the certificate of Chartered Accountant regarding computation of compensation of income as Ex.PW-1/27 and Ex.PW1/28.

4. The learned Tribunal took the income of the deceased to be Rs.3,492.90 per month according to the minimum wages for matriculate, deducted 1/3rd towards personal expenses and applied the multiplier of 8 to compute the loss of dependency at Rs.2,23,576/-. Rs.10,000/- has been awarded towards loss of consortium and funeral expenses. The total compensation awarded is Rs.2,33,600/-.

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

(i) The income of the deceased be taken to be

Rs.10,000/- per month as proved by Ex.PW1/21, Ex.PW1/27 and Ex.PW1/28.

- (ii) The future prospects be awarded to the appellants.
- (iii) The personal expenses of the deceased be reduced from 1/3rd to 1/4th.
- (iv) The multiplier be enhanced from 8 to 9.
- (v) The compensation for loss of consortium be enhanced.
- (vi) The compensation be awarded for loss of love and affection and loss of estate.
- (vii) The rate of interest be enhanced.

6. With respect to the income of the deceased, the learned Tribunal has erred in not considering Ex.PW1/21 which is the Income Tax Return filed by the deceased for the year 2003-04. The learned Tribunal only considered Ex.PW1/27 and Ex.PW1/28. However, the learned Tribunal did not find Ex.PW1/27 and Ex.PW1/28 as sufficient proof of income on the ground that the said documents were signed by the Chartered Accountant only and they have not been proved by examining the Chartered Accountant. The learned Tribunal appears to have ignored Ex.PW1/21 which is the Income Tax Return filed by the deceased in which the income from business during the year 2002-03 has been declared to be Rs.1,20,000/-.

7. The finding of the learned Tribunal with respect to the

income of the deceased is, therefore, set aside and the income of the deceased as proved by Ex.PW1/21 is taken to be Rs.1,20,000/- per annum.

8. The appellants also claimed future prospects. Since the deceased was 59 years old and was self-employed, the claim for future prospects is rejected following the judgment of the Hon'ble Supreme Court in the case of **Sarla Verma Vs. Delhi Transport Corporation, 2009 (6) Scale 129.**

9. The deceased was aged 59 years at the time of the accident and left behind five legal representatives. According to the judgment of the Hon'ble Supreme Court in the case of **Sarla Verma** (supra), the appropriate multiplier at the age of 59 years is 9 and the appropriate deduction is $\frac{1}{4}^{\text{th}}$ as the deceased has left behind 4 to 6 legal representatives.

10. Following the aforesaid judgment of the Hon'ble Supreme Court, the multiplier is enhanced from 8 to 9 and the personal expenses of the deceased are reduced from $\frac{1}{3}^{\text{rd}}$ to $\frac{1}{4}^{\text{th}}$.

11. The learned Tribunal has awarded Rs.10,000/- towards loss of consortium and funeral expenses which is treated to be only towards funeral expenses. Rs.10,000/- is awarded for loss of consortium.

12. The learned Tribunal has not awarded any compensation for loss of love and affection and loss of estate. Rs.10,000/- is awarded towards loss of love and

affection and Rs.10,000/- is awarded towards loss of estate.

13. The learned Tribunal has awarded interest @7% per annum. Following the judgment of the Hon'ble Supreme Court in the case of **Dharampal vs. U.P. State Road Transport Corporation, III 2008 ACC (1) SC**, the rate of interest is enhanced from 7% per annum to 7.5% per annum.

14. Taking the income of the deceased to be Rs.1,20,000/- per annum, deducting $\frac{1}{4}^{\text{th}}$ towards personal expenses, applying the multiplier of 9, adding Rs.10,000/- towards loss of consortium, Rs.10,000/- towards loss of love and affection and Rs.10,000/- is awarded towards loss of estate and Rs.10,000/- towards funeral expenses, the total compensation is computed to be Rs.8,50,000/- [$\text{Rs.1,20,000} \times \frac{3}{4} \times 9$) + Rs.10,000 + Rs.10,000 + Rs.10,000 + Rs.10,000].

15. The appeal is allowed and the award amount is enhanced from Rs.2,33,600/- to Rs.8,50,000/- along with interest @7.5% per annum from the date of filing of the petition till realization.

16. The enhanced award amount along with interest be deposited by respondent No.1 with UCO Bank A/c Parvesh Anand 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.

17. Upon the aforesaid deposit being made, the UCO Bank is directed to release a sum of Rs.50,000/- to each of

appellants No.2 to 5 by transferring the said amount to their Saving Bank Account.

18. The remaining amount be kept in fixed deposit for a period of three years. The shares of appellant No.2 to 5 in the balance amount shall be as under:-

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|-------|----------------|---|-----|
| (i) | Appellant No.2 | : | 40% |
| (ii) | Appellant No.3 | : | 20% |
| (iii) | Appellant No.4 | : | 20% |
| (iv) | Appellant No.5 | : | 20% |

19. The interest on the aforesaid fixed deposits shall be paid monthly by automatic credit of interest in the respective Savings Account of appellants No.2 to 5.

20. Withdrawal from the aforesaid account shall be permitted to appellants No.2 to 5 after due verification and the Bank shall issue photo Identity Card to appellants No.2 to 5 to facilitate identity.

21. No cheque book be issued to appellants No.2 to 5 without the permission of this Court.

22. The original Fixed Deposit Receipts shall be retained by the Bank in the safe custody. However, the original Pass Book shall be given to appellants No.2 to 5 along with the photocopy of the FDRs.

23. The original Fixed Deposit Receipts shall be handed over to appellants No.2 to 5 on the expiry of the period of the FDRs.

24. No loan, advance or withdrawal shall be allowed on the said fixed deposit receipts without the permission of this Court.

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

26. On the request of appellants No.2 to 5, the Bank shall transfer the Savings Account to any other branch of UCO Bank according to the convenience of appellants No.2 to 5.

27. Appellants No.2 to 5 shall furnish all the relevant documents for opening of the Saving Bank Account and Fixed Deposit Account to Mr. M.M. Tandon, Member-Retail Team, UCO Bank Zonal, Parliament Street, New Delhi.

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

29. Copy of this order be also sent to Mr. M.M. Tandon, Member-Retail Team, UCO Bank Zonal, Parliament Street, New Delhi (Mobile No. 09310356400) through the UCO Bank, High Court Branch under the signature of Court Master.

J.R. MIDHA, J

DECEMBER 08, 2009

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