

+ **MAC.APP.631/2007**

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Date of decision: 7th August, 2009

NIRMALA DEVI Appellant
Through Mr. O.P. Gulabani, Advocate

versus

JITENDER SINGH & ANR. 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)

1. The appellants have challenged the award of the learned Tribunal whereby compensation of Rs.1,09,650/- has been awarded to the appellants. The appellants seek enhancement of the award amount.
2. The accident dated 6th December, 1991 resulted in the death of Ram Kumar aged 25 years. The deceased was survived by his widow, daughter and parents who filed the claim petition before the learned Tribunal
3. The deceased was working as dispatch clerk with M/s Flex Industries limited earning Rs.1,607/- per month. The learned

Tribunal took the income of the deceased as Rs.1,600/- per month and deducted 1/3rd towards the personal expenses of the deceased and applied the multiplier of 7 to compute the loss of dependency at Rs.89,650/-. Rs.5,000/- has been awarded towards the funeral expenses and Rs.15,000/- towards loss of love and affection. The total compensation awarded is Rs.1,09,650/-.

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

- (i) The future prospects be taken into consideration to compute the compensation.
- (ii) The multiplier of 18 should be applied considering the age of the deceased.
- (iii) The compensation be awarded towards loss of consortium.
- (iv) Interest rate be enhanced from 6% to 9%.

5. With respect to the income of the deceased, the appellant appeared in the witness box as PW-2 and proved the salary certificate – Ex.PW2/1 according to which the deceased was earning Rs.1,607/- per month. PW-2 further deposed that the deceased was giving Rs.1,300–Rs.1,400/- for household expenses. The Supervisor, Flex Industries Limited appeared as PW-3 and confirmed the salary certificate – Ex.PW2/1 to be correct. PW-3 further deposed that the colleague of the deceased has been promoted as Supervisor and is drawing a salary of Rs.8,000/- per month.

6. From the statements of PW-2 and PW-3, it has been proved that the income of the deceased at the time of the accident was Rs.1,607/- per month out of which the deceased was contributing Rs.1,300 – Rs.1,400/- towards the household expenses. PW-3 has also proved the future prospects of the deceased.

7. Considering the evidence on record, the income of the deceased is taken to be Rs.1,607/- and 50% is added towards the future prospects according to the recent judgment of the Hon'ble Supreme Court in the case of **Sarla Verma Vs. Delhi Transport Corporation, 2009 (6) Scale 129** and the income after taking future prospects into consideration is taken to be Rs.2,410.50 (Rs.1,607 + Rs.803.50) per month.

8. The deceased was contributing Rs.1,300 – Rs.1,400/- per month to his family out of Rs.1,607/- per month. Deduction of 1/3rd towards the personal expenses is not a thumb rule. Where the income of the deceased is very low, the personal expenses of the deceased can be taken to be 1/5th or 1/6th. Considering the income of the deceased to be lower than even the minimum wages, 1/6th of the aforesaid amount is taken to be personal expenses of the deceased. The deduction of 1/6th is allowed in the peculiar facts of this case and shall not be treated as a precedent. The loss of dependency of the claimant is taken to be Rs.2008.75/-(Rs.2,410.5 X 5/6) which is rounded off as Rs.2,000/-.

9. The deceased left behind his widow, daughter and parents. The deceased was aged 25 years at the time of the accident. The deceased had married the appellant about one year before the

accident. The learned Tribunal has applied the multiplier of 7 considering the age of the mother of the deceased. The appropriate multiplier according to the age of the deceased is 18 as per the judgment of Hon'ble Supreme Court in the case of **Sarla Verma** (Supra).

10. The learned counsel for the appellant submits that appellant No.1 is the widow of the deceased and she remarried the younger brother of the deceased on 13th December, 1995 in the interest of the child and the family. The learned counsel for the appellant further submits that the widow is still in the family of the deceased and is dependent on the compensation to be awarded in respect of the death of the deceased. The learned Tribunal was in error in not considering the appellant to be dependent upon the deceased and in applying the multiplier according to the age of the mother of the deceased. The finding of the learned Tribunal with respect to application of multiplier of 7 is, therefore, modified and the multiplier of 18 is applied considering the age of the deceased. The loss of dependency applying the multiplier of 18 is computed to Rs.4,32,000/- (Rs.2,000/- X 12 X 18).

12. The learned Tribunal has not awarded any amount towards loss of consortium and loss of estate. Rs.10,000/- is awarded towards loss of consortium and Rs.10,000/- towards loss of estate. The total compensation payable in respect of the death of the deceased is Rs.4,72,000/- (Rs.4,32,000/- + Rs.5,000/- + Rs.15,000/- + Rs.10,000/- + Rs.10,000/-).

13. The appeal is allowed and the award amount is enhanced from Rs.1,09,650/- to Rs.4,72,000/-.

14. The learned Tribunal has awarded interest at the rate of 6% per annum which is low considering the prevalent rate of interest at the time of filing of the petition. The rate of interest on the award amount is, therefore, enhanced from 6% to 9% per annum from the date of filing of the petition, i.e, 30th January, 1992 up to 31st December, 2001 and at the rate of 7.5% per annum from 1st January, 2002 till realization.

15. The shares of the claimants in the enhanced award amount shall be as under:-

Appellant No. 1	20%
Appellant No. 2	10%
Appellant No. 3	70%

16. Respondent no.3 is directed to deposit the enhanced awarded amount along with interest within 30 days. The deposit be made by means of a cheque drawn in the name of UCO Bank A/c Smt. Nirmala Devi and to be handed over to Mr. M.M. Tandon, Member-Retail Team, UCO Bank Zonal, Parliament Street, New Delhi (Mobile No. 09310356400). Upon the aforesaid deposit being made, UCO Bank is directed to release a sum of Rs.50,000/- to the appellant No.1 and Rs.50,000/- to appellant No.2 by transferring the said amount in their respective Saving Accounts.

17. The remaining shares of the appellants be kept in fixed deposit for a period of 5 years. The interest be paid monthly by transferring the same in their respective Savings Accounts.

18. The interest on the aforesaid fixed deposits shall be paid monthly by automatic credit of interest in the Savings Account of appellants.

19. No cheque book be issued to the appellants without the permission of this Court.

20. The original Fixed Deposit Receipts shall be retained by the Bank in the safe custody. However, the original Pass Books shall be given to the appellants along with the photocopy of the FDRs.

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

22. No loan, advance or withdrawal shall be permitted on the said Fixed Deposit Receipts without the permission of this Court.

23. 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.

24. The appellants 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 (Mobile No. 09310356400).

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

26. 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

AUGUST 07, 2009/rs