

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ MAC.APP.No.543/2005

Date of Decision: 31st May, 2010

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UNITED INDIA INSURANCE CO. LTD. Appellant
Through : Mr. K.L. Nandwani, Adv.

versus

TEJ NARAYAN PASWAN AND ORS. Respondents
Through : Mr. S.D. Pushkar, Adv.
for R-1 and 2.
Mr. Gagan Gupta, 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 appellant has challenged the award of the learned Tribunal whereby compensation of Rs.4,80,000/- has been awarded to claimants/respondents No.1 and 2.

2. The accident dated 22nd October, 2000 resulted in the death of Ashok Paswan. The deceased was survived by his parents who filed the claim petition before the Claims Tribunal.

3. The deceased was aged 19 years at the time of the accident and was working as a cleaner earning Rs.2,500/- per month. The learned Tribunal took the income of Rs.2,500/- considering that minimum wages of unskilled worker were

Rs.2,524/- per month at that time, added 50% towards inflation and rise in price index, deducted $\frac{1}{3}^{\text{rd}}$ towards his personal expenses and applied the multiplier of 15 to compute the loss of dependency at Rs.4,50,000/-. Rs.20,000/- has been awarded towards loss of love and affection and Rs.10,000/- towards funeral expenses. The total compensation awarded is Rs.4,80,000/-.

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

(i) The liability of the appellant is limited to Rs.2,81,000/- under the Workmen's Compensation Act, 1923.

(ii) Without prejudice, the appropriate deduction towards personal expenses should be $\frac{1}{2}$ instead of $\frac{1}{3}^{\text{rd}}$.

5. The learned counsel for claimants/respondents No. 1 and 2 in reply submits that the appropriate multiplier according to the judgment of the Hon'ble Supreme Court on the case of **Sarla Verma Vs. Delhi Transport Corporation, 2009 (6) Scale 129** is 18 whereas the Claims Tribunal has applied the multiplier of 15. The learned counsel further submits that the Claims Tribunal has not awarded compensation for loss of estate. The learned counsel further submits that the accident occurred on 22nd October, 2000 and the claimants are without any compensation except the interim award and, therefore, the

award does not call for any interference.

6. The learned counsel for respondent No.3 submits that the plea of limited liability under the Workmen's Compensation Act, 1923 was neither raised nor proved by the appellant before the Claims Tribunal.

7. The Trial Court Record reveals that the appellant did not raise the plea of limited liability under the Workmen's Compensation Act, 1923 before the Claims Tribunal. In para 17 of the written statement, the appellant admitted that the offending vehicle was fully insured. Para 17 of the written statement is reproduced hereunder:-

"17. That the vehicle is fully insured with the United India Insurance Co. Ltd. vide Cover Note No.053330. However, it is specifically denied that the alleged vehicle is involved in the accident in any manner."

8. No evidence was led by the appellant before the Claims Tribunal to prove the Insurance Policy or the terms and conditions of the Insurance Policy.

9. In that view of the matter, the plea of limited liability is not open to the appellant to be raised in appeal for the first time. The deceased was aged 19 years at the time of the accident and the appropriate multiplier according to the judgment of the Hon'ble Supreme Court in the case of **Sarla Verma** (supra) is 18 and the appropriate deduction towards personal expenses is 1/2 whereas the Claims Tribunal has applied the multiplier of 15 and had deducted 1/3rd towards personal expenses. The Claims Tribunal has also not

awarded any compensation for loss of estate.

10. The claimants are present in the Court. Claimant No.1 is a daily wager earning about Rs.100/- per day whenever he gets the work. Claimant No.2 is the housewife. The claimants had only one child who died in the road accident. The claimants are without compensation for the last more than nine years. In view of the ex-parte stay order dated 11th July, 2005 by this Court, the claimants have been deprived of the lawful compensation payable to them. In the peculiar facts and circumstances of this case and also considering that the Claims Tribunal has applied lower multiplier, no compensation has been awarded for loss of estate and that the claimants have been deprived of the lawful compensation for more than nine years, no interference is warranted in the award.

11. The appeal is dismissed. The appellant deposited a sum of Rs.2,06,000/- with this Court in terms of the order dated 11th July, 2005. Vide order dated 8th May, 2009, the Registrar General of this Court was directed to transfer the aforesaid amount of Rs.2,06,000/- as well as the statutory amount of Rs.25,000/- to the Claims Tribunal. The aforesaid amount of Rs.2,31,000/- (Rs.2,06,000 + Rs.25,000) was transferred to the Claims Tribunal on 4th July, 2009. After adjusting the interim award amount along with interest amounting to Rs.64,650/- and the aforesaid amount of Rs.2,31,000/-, the appellant's liability in respect of the award

amount of interest thereon is Rs.4,38,386/- which has been deposited by the appellant by means of six cheques with the Claims Tribunal (three cheques in the name of Tej Narayan Paswan for Rs.1,70,158, Rs.7,851/- and Rs.41,184/- totaling to Rs.2,19,193/- and three cheques in the name of Meera Devi for Rs.1,70,158/-, Rs.7,851/- and Rs.41,184/- totaling to Rs.2,19,193/-). All the aforesaid six cheques have been deposited by the Claims Tribunal with State Bank of India through Mr. H.S. Rawat, Relationship Manager, Tis Hazari Branch, Tis Hazari (Mb: 09717044322).

12. The amount of Rs.2,31,000/- sent by this Court to the Claims Tribunal has been kept in two fixed deposit receipts as per details given hereunder:-

- (i) Fixed deposit receipt No.470704 dated 10th December, 2009 for Rs.1,08,500/- in the name of Tej Narayan Paswan.
- (ii) Fixed deposit receipt No.470703 dated 10th December, 2009 for Rs.1,22,500/- in the name of Meera Devi.

13. As such, a sum of Rs.6,69,386/- is with State Bank of India, Tis Hazari Branch, Delhi as per break-up given hereunder:-

- (i) Fixed deposit receipt dated 10th December, 2009 for Rs.1,08,500/- plus Rs.2,19,193/- in the name of Tej Narayan Paswan.

- (ii) Fixed deposit receipt dated 10th December, 2009 for Rs.1,22,500/- plus Rs.2,19,193/- in the name of Meera Devi.

14. The State Bank of India, Tis Hazari Branch is directed to discharge both the FDRs No.470703 and 470704 and issue fresh FDRs for Rs.6,00,000/- out of the FDR amount and Rs.4,38,386/- deposited by the Claims Tribunal in the following manner:-

- (i) Fixed deposit for Rs.50,000/- in the joint names of respondents No.1 and 2 for a period of six months.
- (ii) Fixed deposit for Rs.50,000/- in the joint names of respondents No.1 and 2 for a period of one year.
- (iii) Fixed deposit for Rs.50,000/- in the joint names of respondents No.1 and 2 for a period of one and a half years.
- (iv) Fixed deposit for Rs.50,000/- in the joint names of respondents No.1 and 2 for a period of two years.
- (v) Fixed deposit for Rs.50,000/- in the joint names of respondents No.1 and 2 for a period of two and a half years.
- (vi) Fixed deposit for Rs.50,000/- in the joint names of respondents No.1 and 2 for a period of three years.
- (vii) Fixed deposit for Rs.50,000/- in the joint names of respondents No.1 and 2 for a period of three and

a half years.

(viii) Fixed deposit for Rs.50,000/- in the joint names of respondents No.1 and 2 for a period of four years.

(ix) Fixed deposit for Rs.50,000/- in the joint names of respondents No.1 and 2 for a period of four and a half years.

(x) Fixed deposit for Rs.50,000/- in the joint names of respondents No.1 and 2 for a period of five years.

(xi) Fixed deposit for Rs.50,000/- in the joint names of respondents No.1 and 2 for a period of five and a half years.

(xii) Fixed deposit for Rs.50,000/- in the joint names of respondents No.1 and 2 for a period of six years.

15. The remaining amount be released to respondents No.1 and 2 in equal shares by transferring the same to their respective Saving Bank Account.

16. The interest on the aforesaid fixed deposits shall be paid monthly by automatic credit of interest in the Savings Account of respondents No.1 and 2.

17. Withdrawal from the aforesaid account shall be permitted to respondents No.1 and 2 after due verification and the Bank shall issue photo Identity Card to respondents No.1 and 2 to facilitate identity.

18. No cheque book be issued to respondents No.1 and 2 without the permission of this Court.

19. The Bank shall issue Fixed Deposit Pass Book instead of the FDRs to respondents No.1 and 2 and the maturity amount of the FDRs be automatically credited to the Saving Bank Account of the beneficiary at the end of the FDR.
20. No loan, advance or withdrawal shall be allowed on the said fixed deposit receipts without the permission of this Court.
21. Half yearly statement of account be filed by the Bank in this Court.
22. On the request of respondents No.1 and 2, the Bank shall transfer the Savings Account to any other branch according to the convenience of respondents No.1 and 2.
23. Respondents No.1 and 2 shall furnish all the relevant documents for opening of the Saving Bank Account and Fixed Deposit Account to Mr. H.S. Rawat, Relationship Manager, Tis Hazari Branch, Tis Hazari (Mb: 09717044322).
24. Copy of the order be given dasti to counsel for both the parties under the signatures of the Court Master.
25. Copy of this order be also sent to Mr. H.S. Rawat, Relationship Manager, Tis Hazari Branch, Tis Hazari (Mb: 09717044322) under the signature of Court Master.

MAY 31, 2010

J.R. MIDHA, J