

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

+ MAC.APP.No.592/2006

Date of Decision:18th May, 2010

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ALKA GUPTA & ORS. Appellants
Through : Mr. Vinay Kumar Garg and
Ms. Seema Bhatt, Adv.

versus

NIHAR AMIT DAVE & ORS. Respondents
Through : Mr. D.K. 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.21,40,000/- has been awarded to them. The appellants seek enhancement of the award amount.

2. The accident dated 20th June, 1996 resulted in the death of S.K. Gupta. The deceased was survived by his widow, two minor children and mother who filed the claim petition before the learned Tribunal. The mother of the deceased was alive at the time of the accident. However, the mother of the deceased expired during the pendency of the claim petition in the year 2004.

3. The deceased was aged about 40 years at the time of the accident and was working as Senior Project Co-ordinator with M/s Phoenix Overseas Ltd. and drawing a salary of Rs.18,800/-. The learned Tribunal added 50% towards future prospects, deducted 1/3rd towards the personal expenses of the deceased and applied the multiplier of 15 to compute the loss of dependency at Rs.20,72,160/-. The learned Tribunal has awarded Rs.30,000/- towards loss of consortium, Rs.30,000/- towards loss of love and affection and Rs.5,000/- towards funeral expenses. The learned Tribunal has awarded total compensation of Rs.21,40,000/- to the appellants.

4. The learned counsel for the appellants has 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 1/4th.
- (ii) The deduction towards the Income Tax be reduced from 30% to 10%.
- (iii) The rate of interest be enhanced from 7% to 7.5% per annum

5. The deceased left behind four legal representatives and the appropriate deduction in accordance with the judgment of the Hon'ble Supreme Court in the case of **Sarla Verma Vs. Delhi Transport Corporation, 2009 (6) Scale 129** is 1/4th. The Claims Tribunal has deducted 1/3rd towards the personal expenses of the deceased. Following the aforesaid

judgment of the Hon'ble Supreme Court, the personal expenses are reduced from 1/3rd to 1/4th.

6. The learned Tribunal has taken the income of the deceased as Rs.28,200/- after adding 50% towards the future prospects. The Claims Tribunal has deducted 1/3rd towards Income Tax. The learned counsel for the appellant submits that the appropriate deduction should be 10%. The Accounts Department of this Court has done the calculation and at the time of the accident, the Income Tax according to the prevailing rates was 27%. The deduction towards the Income Tax be reduced from 1/3rd to 27% (33.33% to 27%).

7. The learned counsel for respondent No.3 points out that the compensation towards loss of love and affection and loss of consortium is on a higher side. Following the aforesaid judgment, the compensation towards loss of love and affection is reduced from Rs.30,000/- to Rs.10,000/- and the compensation towards loss of consortium is also reduced from Rs.30,000/- to Rs.10,000/-. Rs.10,000/- is awarded for the compensation towards loss of estate.

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

9. The appellants have entitled to total compensation of Rs.28,14,110/- as per breakup given herein:-

- (i) Compensation for loss of : Rs.27,79,110/-
dependency [(Rs.28,200 - 27%
towards Income Tax – 1/4th
towards personal expenses) x
12 x 15]
- (ii) Compensation towards loss of : Rs.10,000/-
consortium.
- (iii) Compensation towards loss of : Rs.10,000/-
love and affection
- (iv) Compensation towards loss of : Rs.10,000/-
estate.
- (v) Compensation for funeral : Rs.5,000/-
expenses.

Total Amount : Rs.28,14,110/-

10. The appeal is allowed and the award amount is enhanced from Rs.21,40,000/- to Rs.28,14,110/- along with interest @7.5% per annum from the date of filing the petition till realization.

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

12. Upon the said amount being deposited, the UCO Bank is directed to release 10% of the said amount to the appellant No.1 by transferring the same to her UCO Bank account. The remaining amount be kept in fixed deposits in the following manner:-

- (i) Fixed deposit in respect of 10% of the amount in the name of appellant No.1 for a period of 6 months.
- (ii) Fixed deposit in respect of 10% of the amount in the name of appellant No.1 for a period of one year.
- (iii) Fixed deposit in respect of 10% of the amount in the name of appellant No.1 for a period of one and a half years.
- (iv) Fixed deposit in respect of 10% of the amount in the name of appellant No.2 for a period of two years.
- (v) Fixed deposit in respect of 10% of the amount in the name of appellant No.2 for a period of two and a half years.
- (vi) Fixed deposit in respect of 10% of the amount in the name of appellant No.2 for a period of three years.
- (vii) Fixed deposit in respect of 10% of the amount in the name of appellant No.3 for a period of three and a half years.

(viii) Fixed deposit in respect of 10% of the amount in the name of appellant No.3 for a period of four years.

(ix) Fixed deposit in respect of 10% of the amount in the name of appellant No.3 for a period of four and a half years.

13. The interest on the aforesaid 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 Bank shall issue Fixed Deposit Pass Book instead of the FDRs to the appellants and the maturity amount of the FDRs be automatically credited to the Saving Bank Account of the beneficiary at the end of the FDR.

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

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

19. On the request of appellant No.1, the Bank shall transfer the Savings Account to any other branch according to the convenience of appellant No.1.

20. The appellant Nos.1 to 3 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.

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

22. 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.

MAY 18, 2010
HL

J.R. MIDHA, J