

Date of Decision: 26th March, 2010

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+ MAC.APP.No.669/2006

M/S UNITED INDIA INSURANCE CO Appellant
Through Mr. Abhishek Kumar and
Mr. Prabhat Kumar, Advs.

versus

BABY KASHWI AGGARWAL & ORS Respondents
Through. Mr. R.K. Kohli and
Mr. Madhurendra Kumar, Advs.

+ MAC.APP. 729/2006

BABY KASHWI AGARWAL ... Appellant
Through. Mr. R.K. Kohli and
Mr. Madhurendra Kumar, Advs.

versus

UNITED INDIA INSURANCE CO. & ORS. Respondents
Through Mr. Abhishek Kumar and
Mr. Prabhat Kumar, Advs.

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.11,58,000/- has been awarded to claimants/respondents No.1, 3 and 4.

2. The accident dated 10th May, 2004 resulted in death of Nirman Aggarwal. The deceased was survived by his minor daughter and parents.

3. The deceased was travelling in Mahendra Scorpio Car bearing No.DL-4CR-0283 which met with an accident with a truck. The truck ran away from the spot and was not traced out. FIR – Ex.PW3/A was registered against the driver of the truck. The appellant is the insurer of the Mahendra Scorpio Car.

4. The appellant has challenged the impugned award on two grounds. The first ground of challenge is that the appellant is not liable in respect of the death of the occupants of the Mahendra Scorpio car. The second ground of challenge is that the accident occurred due to the composite negligence of the Mahendra Scorpio car and the truck and, therefore, the liability of the appellant is liable to be reduced.

5. With respect to the liability of the appellant in respect of the occupants of the car, the learned counsel for the appellant does not press the same in view of the judgment of this Court in the case of Yashpal Luthra vs. United India Insurance Co. Ltd., MAC.APP.No.176/2009 decided on 9th December, 2009 in which all the Insurance Companies have admitted their liability in respect of the occupants of a car.

6. With respect to the second ground raised by the appellant, it is noted that the deceased was the occupant of

Mahendra Scorpio car which met with an accident with a truck. The FIR was registered against the driver of the truck. The finding of the Claims Tribunal holding the appellant to be liable is based on evidence on record and is upheld.

7. The appeal is dismissed.

8. The appellant has deposited the entire award amount with the Claims Tribunal in terms of the order dated 18th August, 2006 passed by this Court. The Claims Tribunal is directed to release the award amount to the claimants, if not already done.

MAC.APP.No.729/2006

1. The appellants are seeking the enhancement of the award amount.

2. The deceased was aged 32 years at the time of the accident and was working as Administrator-cum-Manager with M/s J.K. Oils Industries earning Rs.14,000/- per month. The Claims Tribunal added 50% towards future prospects, deducted 2/3rd towards personal expenses and applied the multiplier of 12 to compute the loss of dependency at Rs.10,08,000/-. Rs.1,50,000/- has been awarded towards loss of love and affection. The total compensation awarded is Rs.11,58,000/-.

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

(i) The multiplier be enhanced from 12 to 16.

- (ii) The personal expenses of the deceased be reduced from $\frac{2}{3}^{\text{rd}}$ to $\frac{1}{3}^{\text{rd}}$.
- (iii) The compensation be awarded for loss of estate and funeral expenses.
- (iv) The rate of interest be enhanced from 6% per annum to 7.5% per annum.

4. The learned counsel for Insurance Company submits that the compensation for loss of love and affection is on a higher side and is liable to be reduced.

5. The deceased was aged 32 years at the time of the accident and has left behind three legal representatives. According to the judgment of the Hon'ble Supreme Court in the case of **Sarla Verma Vs. Delhi Transport Corporation, 2009 (6) Scale 129**, the appropriate multiplier in the present case is 16 and the appropriate deduction towards the personal expenses is $\frac{1}{3}^{\text{rd}}$. The contrary finding of the Claims Tribunal is set aside. Taking the income of the deceased as Rs.14,000/-, adding 50% towards future prospects, deducting $\frac{1}{3}^{\text{rd}}$ towards personal expenses and applying the multiplier of 16, the loss of dependency is computed to be Rs.26,88,000/- [(Rs.14,000 + 50% of Rs.14,000) x 12 x $\frac{2}{3}$ x 16]. The compensation for loss of love and affection is reduced from Rs.1,50,000/- to Rs.10,000/-. Rs.10,000/- is awarded towards loss of estate and Rs.10,000/- towards funeral expenses. The total compensation is computed as Rs.27,18,000/- (Rs.26,88,000

+ Rs.10,000 + Rs.10,000 + Rs.10,000). The rate of interest is enhanced from 6% per annum to Rs.7.5% 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.**

6. The appeal is allowed and the award amount is enhanced from Rs.11,58,000/- to Rs.27,18,000/- along with interest @7.5% per annum from the date of filing of the claim petition till the date of notice of deposit under Order XXI Rule 1 of the Code of Civil Procedure.

7. The enhanced award amount along with interest be deposited by respondent No.1 with UCO Bank A/c Baby Kashwi Aggarwal, Delhi High Court Branch through Mr. M.M. Tandon, Member-Retail Team, UCO Bank Zonal, Parliament Street, New Delhi (Mobile No. 09310356400) within 30 days.

8. Upon the aforesaid deposit being made, UCO Bank is directed to release 10% of the same to Baby Kashwi Aggarwal (Respondent No.1) through her guardian and 10% jointly to Jai Prakash Aggarwal (Respondent No.3) and Usha Aggarwal (Respondent No.4), by transferring the said amount to their Savings Bank Account. The remaining amount be kept in fixed deposit in the following manner:-

(i) Fixed deposit in respect of 15 % of the amount in the name of Kashwi Aggarwal for a period of one year.

(ii) Fixed deposit in respect of 15% of the amount in

the joint names of Jai Prakash Aggarwal and Usha Aggarwal for a period of one year.

- (iii) Fixed deposit in respect of 50% of the amount in the name of Kashwi Aggarwal till she attains the age of maturity.

9. The interest on the fixed deposit of Kashwi Aggarwal shall be paid monthly by automatic credit of interest in the Savings Account of Kashwi Aggarwal to be operated by her guardian whereas the interest on the fixed deposit of Jai Prakash Aggarwal and Usha Aggarwal be released to them, by transferring the same to their joint account.

10. Withdrawal from the aforesaid account shall be permitted to respondent Nos.1, 3 and 4 after due verification and the Bank shall issue photo Identity Card to appellants No.1, 3 and 4 to facilitate identity.

11. No cheque book be issued to respondent Nos.1, 3 and 4 without the permission of this Court.

12. The Bank shall issue Fixed Deposit Pass Book instead of the FDRs to respondent Nos.1, 3 and 4 and the maturity amount of the FDRs be automatically credited to the Saving Bank Account of the beneficiary at the end of the FDR.

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

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

15. On the request of respondent Nos.1 or 3 and 4, the Bank shall transfer the Savings Account to any other branch according to the convenience of respondent Nos.1, 3 and 4.

16. The respondent Nos.1, 3 and 4 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.

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

18. 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

**MARCH 26, 2010
HL**