

+ MAC.APP.No.727/2006Date of Decision : 25th March, 2010

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THE NEW INDIA ASSURANCE CO LTD Appellant
Through : Mr. Pankaj Seth, Adv.

versus

MUNESH AND OTHERS Respondents
Through : Mr. Sukhbir Singh and
Mr. Nishant Singh, Advs.
for R-1 to 7.

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 No.....(to be numbered)**

1. Issue notice.
2. Mr. Pankaj Seth, Advocate accepts notice on behalf of the appellant.
3. For the reasons stated in the application, the delay in refiling of cross-objections is condoned. The cross-objections are taken on record.
4. CM stands disposed of.

MAC.APP. 727/2006 and CM No.5365/2010

1. The appellant has challenged the award of the learned Tribunal whereby compensation of Rs.6,22,200/- has been

awarded to claimants/respondents No.1 to 7.

2. The accident dated 18th June, 2003 resulted in the death of Bhagwan Dass Upadhyay. The deceased was survived by his widow, three minor daughters, one minor son and parents who filed the claim petition before the learned Tribunal.

3. The deceased was aged 37 years at the time of the accident and was working with M/s PNC Construction Co. Ltd., Agra drawing a salary of Rs.3,100/- per month. Vide promotion letter dated 15th June, 2003, the deceased was promoted as Technical Supervisor w.e.f. 1st July, 2003 at a salary of Rs.5,100/- per month. The Claims Tribunal took the income of the deceased as Rs.3,100/- per month, added 50% towards future prospects, deducted 1/3rd towards the personal expenses and applied the multiplier of 16 to compute the loss of dependency at Rs.5,95,200/-. Rs.2,000/- has been awarded towards funeral expenses and Rs.25,000/- towards mental pain and agony. The total compensation awarded is Rs.6,22,200/-.

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

- (i) The rash and negligent driving of the offending vehicle has not been sufficiently proved.
- (ii) The future prospects of the deceased should not have been taken into consideration.

5. The learned counsel for claimants/respondents No.1 to 7 has raised the following grounds at the time of hearing of this appeal:-

- (i) The income of the deceased be taken to be Rs.5,100/- per month.
- (ii) The personal expenses of the deceased should be taken as 1/5th instead of 1/3rd.
- (iii) The compensation be awarded for loss of consortium, loss of love and affection and loss of estate.
- (iv) The rate of interest be enhanced from 6% per annum to 7.5% per annum.

6. The learned counsel for the appellant in rejoinder submits that the multiplier be reduced from 16 to 15 in view of the judgment of the Hon'ble Supreme Court in the case of **Sarla Verma Vs. Delhi Transport Corporation, 2009 (6) Scale 129.**

7. The deceased was travelling on the pillion of motorcycle being driven by Constable Avdhesh. The eye-witness, PW-4 was following the said motorcycle on another motorcycle being driven by him and Constable Mukesh was sitting on the pillion of second motorcycle. The motorcycle on which the deceased was travelling was hit by truck bearing No.UP-80D-9539. PW-4 is the eye-witness who appeared in the witness box and deposed that the accident occurred due to the rash and negligent driving of the

offending truck. The finding of the rash and negligent driving of the offending truck is based on evidence on record and is upheld.

8. The deceased was promoted on 15th June, 2003 vide letter – Ex.PW1/8 as Technical Supervisor at a salary of Rs.5,100/- per month w.e.f. 1st July, 2003. The income of the deceased for computation of compensation should have been taken as Rs.5,100/- per month. The finding of the Claims Tribunal in taking the income of the deceased as Rs.3,100/- is set aside and the income of the deceased for computation of compensation is taken as Rs.5,100/- per month.

9. The deceased was aged 37 years at the time of the accident and was survived by seven legal representatives. According to the judgment of the Hon'ble Supreme Court in the case of **Sarla Verma** (supra), 1/5th is deducted towards the personal expenses of the deceased and the multiplier is reduced from 16 to 15. Taking the income of the deceased to be Rs.5,100/- per month, adding 50% towards future prospects, deducting 1/5th towards personal expenses and applying the multiplier of 15, the loss of dependency is computed to be Rs.11,01,600/- [(Rs.5,100 + 50% of Rs.5,100) x 12 x 4/5 x 15].

10. The Claims Tribunal has not awarded any compensation for loss of consortium, loss of love and affection and loss of estate. However, the Claims Tribunal has awarded

Rs.25,000/- towards mental pain and agony which is not a permissible head. Rs.25,000/- is, therefore, treated as compensation towards loss of consortium, loss of love and affection and loss of estate. The claimants are entitled to total compensation of Rs.11,28,600/- (Rs.11,01,600 + Rs.25,000 + Rs.2,000).

11. The Claims Tribunal has awarded interest @6% per annum which is enhanced 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.**

12. The appeal is dismissed. The cross-objections are allowed and the award amount is enhanced from Rs.6,22,200/- to Rs.11,28,600/- along with interest @7.5% per annum from the date of filing of the claim petition up to the date of notice of deposit under Order XXI Rule 1 of the Code of Civil Procedure.

13. The enhanced award amount along with interest be deposited by the appellant with UCO Bank A/c Munesh, 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.

14. Upon the aforesaid deposit being made, the UCO Bank is directed to release 10% of the said amount to respondents No.1,6 and 7 in equal shares. The remaining amount be kept in fixed deposit in the following manner:-

- (i) Fixed deposit in respect of 10% of the amount in the name of respondent No.6 for a period of one year.
- (ii) Fixed deposit in respect of 10% of the amount in the name of respondent No.7 for a period of two years.
- (iii) Fixed deposit in respect of 10% of the amount in the name of respondent No.1 for a period of three years.
- (iv) Fixed deposit in respect of 10% of the amount in the name of respondent No.2 for a period of four years.
- (v) Fixed deposit in respect of 10% of the amount in the name of respondent No.3 for a period of five years.
- (vi) Fixed deposit in respect of 10% of the amount in the name of respondent No.4 for a period of six years.
- (vii) Fixed deposit in respect of 10% of the amount in the name of respondent No.5 for a period of seven years.
- (viii) Fixed deposit in respect of 10% of the amount in the name of respondent No.1 for a period of eight years.
- (ix) Fixed deposit in respect of 10% of the amount in the name of respondent No.1 for a period of nine years.

years.

15. The interest on the aforesaid fixed deposits shall be paid monthly by automatic credit of interest in the Savings Account of respondent No.1.

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

17. No cheque book be issued to respondent No.1 without the permission of this Court.

18. The Bank shall issue Fixed Deposit Pass Book instead of the FDRs to respondent No.1 and the maturity amount of the FDRs be automatically credited to the Saving Bank Account of the beneficiary at the end of the FDRs.

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

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

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

22. Respondent Nos.1 to 7 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.

23. The learned counsel for the claimants submit that respondent No.1 is planning to fix the marriage of respondent No.2. As and when the marriage of respondent No.2 is fixed, the liberty is given to the respondents to approach this Court for pre-mature discharge of the FDR in the name of respondent No.2.

24. All Pending application stands disposed of.

25. After the deposit of the enhanced award amount by the appellant, the appellant shall furnish the proof of deposit with the Registry whereupon the Registry shall refund the statutory amount of Rs.25,000/- to the appellant through counsel without any further order of this Court.

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

27. 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 25, 2010

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