

+ MAC.APP.No.344/2008Date of Decision : 22nd March, 2010

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

versus

SHIMLA DEVI & ORS. Respondents
Through : Mr. Y.R. Sharma, Adv.
for R-1 and 2.

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.4,58,200/- has been awarded to claimants/respondents No.1 and 2.

2. The accident dated 5th December, 1998 resulted in the death of Krishan Pal. The deceased was survived by his widow, one son and father who filed the claim petition before the learned Tribunal.

3. The deceased was aged 28 years at the time of the accident and was a band master earning Rs.6,500/- per month. However, in the absence of sufficient proof of income, the Claims Tribunal took the minimum wages of

Rs.1,937/- per month and the increase in minimum wages due to inflation and rise in price index into consideration, deducted 1/3rd towards his personal expenses and applied the multiplier of 18 to compute the loss of dependency at Rs.4,18,200/-. Rs.25,000/- has been awarded towards loss of consortium and Rs.15,000/- towards funeral expenses. The total compensation awarded is Rs.4,58,200/-.

4. The only ground urged by learned counsel for the appellant at the time of hearing of this appeal is that the appellant was impleaded on 11th October, 2006 and, therefore, the appellant is liable to pay the interest from the said date. The learned counsel for claimants/respondents No.1 and 2 submit that the application to implead the appellant was filed before the Claims Tribunal on 1st February, 2005 and the Insurance Company entered appearance on 20th April, 2006. The learned counsel further submits that the amendment related back to the filing of the claim petition and the interest has rightly been awarded by the Claims Tribunal.

5. The perusal of the award reveals that the deceased was working as band master earning Rs.6,500/- per month which was proved by the salary certificate dated 15th February, 2005 but the Claims Tribunal disregarded the said evidence on the technical ground that the certificate does not bear the stamp of Azad Band and the registration number has not been mentioned thereon. The Claims Tribunal has also not

awarded any compensation for loss of love and affection and loss of estate. The Claims Tribunal has also awarded lower rate of interest @7% per annum against interest of 7.5% per annum payable according to 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. Respondents No.1 and 2 are present in Court. Respondent No.1 is the widow of the deceased staying in the District Muzaffarnagar, U.P. Respondent No.1 has lost one eye and has no source of livelihood. Respondent No.2 is aged 14 years. In the facts and circumstances of this case and considering that the Claims Tribunal has awarded lower amount of compensation, no interference is warranted in the facts and circumstances of this case. However, the question raised by the learned counsel for the appellant is left open to be examined in an appropriate case.

7. The appellant has deposited a sum of Rs.6,53,894/- with the Registrar General of this Court on 1st August, 2008 in terms of the order dated 7th July, 2008. Out of the said amount, a sum of Rs.1,02,250/- has been released to respondent No.1. Out of the remaining amount, FDR for Rs.1,02,050/- has been kept in fixed deposit in the name of respondent No.1 for a period of five years and Rs.2,04,100/- has been kept in fixed deposit in the name of respondent No.2 till he attains majority. The balance amount of Rs.2,45,694/- has been kept in fixed deposit in the name of

Registrar General of this Court. The Registrar General is directed to transfer/remit the said FDR to UCO Bank with instructions to disburse the amount in terms of this judgment.

8. It is further noted that the appellant has deducted TDS of Rs.14,106/- from the award amount. It is well settled by the order of this Court dated 26th March, 2009 passed in MAC.APP.No.596/2008 that no TDS amount is to be deducted while depositing the amount under the interim order of this Court. In that view of the matter, the TDS of Rs.14,106/- be deducted from the statutory amount of Rs.25,000/- deposited by the appellant and be also transferred to UCO Bank A/c Shimla Devi, Delhi High Court Branch through Mr. M.M. Tandon, Member-Retail Team, UCO Bank Zonal, Parliament Street, New Delhi (Mobile No. 09310356400). The remaining amount of Rs.10,894/- (Rs.25,000 – Rs.14,106) be refunded back to the appellant through counsel within a period of four weeks.

9. Upon the aforesaid amount being deposited, the UCO Bank is directed to release 10% of the same to respondent No.1 by transferring the same to her Saving Bank Account. The remaining amount be kept in fixed deposit in the name of respondent No.1 in the following manner:-

(i) Fixed deposit in respect of 10% of the award amount for a period of six months.

(ii) Fixed deposit in respect of 10% of the award

amount for a period of one year.

- (iii) Fixed deposit in respect of 10% of the award amount for a period of one and a half years.
- (iv) Fixed deposit in respect of 10% of the award amount for a period of two years.
- (v) Fixed deposit in respect of 10% of the award amount for a period of two and a half years.
- (vi) Fixed deposit in respect of 10% of the award amount for a period of three years.
- (vii) Fixed deposit in respect of 10% of the award amount for a period of three and a half years.
- (viii) Fixed deposit in respect of 10% of the award amount for a period of four years.
- (ix) Fixed deposit in respect of 10% of the award amount for a period of four and a half years.

10. With respect to two fixed deposit receipts in the name of respondents No.1 and 2, respondents No.1 and 2 are directed to deposit the said fixed deposit receipts with UCO Bank and UCO Bank is directed to transfer/remit the amount upon maturity in the Saving Bank Account of respondents No.1 and 2 without bothering the claimants to come to Delhi for discharging the FDRs.

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

12. 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.

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

14. 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 FDR.

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

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

17. Respondent No.1 is a permanent resident of District Muzaffarnagar, U.P. Respondent No.1 shall open her account with State Bank of India and give account number to UCO Bank whereupon the UCO Bank shall transfer/remit the monthly interest to respondent No.1. The maturity amount of the FDR should also be automatically transfer/remit to the Saving Bank Account of respondent No.1 without bothering her to visit Delhi for discharge of the FDR.

18. The respondents 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 (Mobile No. 09310356400).

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

20. 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.

MARCH 22, 2010
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J.R. MIDHA, J