

+ MAC.APP.No.443/2009Date of Decision: 5th March, 2010

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CHOLAMANDALAM MS GEN INS. CO. LTD Appellant
Through Ms. Suman Bagga, Advocate.

versus

SMT MANOJ & ORS Respondents
Through Sh. K.K. Sharma, Adv. for
R-1 to R-6

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.13,44,200/- has been awarded to claimants/respondents No.1 to 6.

2. The accident dated 30th March, 2004 resulted in the death of Avadh Bihari. The deceased was survived by his widow, two daughters and parents, who filed the claim petition before the learned Tribunal.

3. The deceased was aged 26 years at the time of the accident and was running a tea stall. However, in the absence of any documentary proof of income, the learned Tribunal took the minimum wages of Rs.2862.90 in respect of

an unskilled worker. The learned Tribunal presumed that the minimum wages would have increased 5 times by the end of his working period and took the average of his minimum wages and 5 times as Rs.8,589/- $\{[Rs.2,862.90 + (Rs.2,862.90 \times 5)]/2\}$. The learned Tribunal deducted 1/4th towards the personal expenses of the deceased and applied the multiplier of 17 to compute the loss of dependency at Rs.13,14,117/-. The learned Tribunal has awarded Rs. 5,000/- towards loss of estate, Rs.5,000/- towards funeral expenses, Rs.10,000/- towards loss of consortium and Rs.10,000/- towards loss of love and affection. The total compensation awarded is Rs.13,44,117/- rounded off as Rs.13,44,200/-.

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

- (i) The increase in minimum wages due to inflation and rise in price index be taken as 50% of minimum wages.
- (ii) The recovery rights be given against the owner of the offending vehicle.

5. The learned counsel for claimants/respondents No.1 to 6 submit that the minimum wages in respect of a skilled person should be taken into consideration and the compensation towards loss of estate and funeral expenses be enhanced.

6. Respondent No.8 is present in person and he submits that he had checked the driving licence of the driver before handing over the vehicle to him and, therefore, he has not committed breach of the terms of the policy. Respondent No.8 further submits that he appeared in the witness box as R2W1 before the Claims Tribunal and deposed that he checked the driving licence of the driver before handing over the motorcycle to him and he was not cross-examined by the Insurance Company on this aspect.

7. The learned Tribunal has taken the minimum wages of Rs.2862.90 in respect of an unskilled worker. The deceased was running a tea stall and, therefore, the minimum wages in respect of a skilled worker ought to have been taken. The minimum wages of Rs.3,286.90 in respect of a skilled worker at the time of accident are taken for computation of compensation.

8. The learned Tribunal has presumed that the minimum wages would have increased five times and has taken the average of five times which is not in accordance with law. It is well settled by catena of judgments of this Court in the cases of **Kanwar Devi vs. Bansal Roadways, 2008 ACJ 2182, National Insurance Company Limited vs. Renu Devi III (2008) ACC 134 and UPSRTC vs. Munni Devi, MAC.APP.No.310/2007** decided on 28.07.2008 that the Court should take judicial notice of increase in minimum wages to meet the increase in price index and inflation rate.

The Court has taken the view that the minimum wages get doubled over the period of 10 years and increase in minimum wages should be taken as average of minimum wages and its double.

9. Following the aforesaid judgments, the finding of the learned Tribunal is set aside and Rs.4,930.35 [(Rs.3286.90 + Rs.6573.80)/2] is taken as the average of minimum wages and its double for computation of compensation.

10. The learned Tribunal has deducted 1/4th towards his personal expenses and applied the multiplier of 17, which is upheld. Taking the income of the deceased at Rs.4930.35, deducting 1/4th towards the personal expenses and applying the multiplier of 17, the loss of dependency is computed to be Rs.7,54,343/- (4930.35 x 3/4 x 12 x 17).

11. The learned Tribunal has awarded Rs.10,000/- towards loss of consortium and Rs.10,000/- towards loss of love and affection which is just, fair and reasonable. However, the compensation for loss of love and affection and funeral expenses is on a lower side. The compensation for loss of love and affection is enhanced from Rs.5,000/- to Rs.10,000/- and the compensation for funeral expenses is also enhanced from Rs.5,000/- to Rs.10,000/-. The total compensation computed to be Rs.7,94,343/- (Rs.7,54,343 + Rs.10,000 + Rs.10,000 + Rs.10,000 + Rs.10,000).

12. Respondent No.8 is the owner of the offending vehicle who appeared in the witness box as R2W1 and deposed that

he had checked driving licence of the driver of the offending vehicle before handing over the motorcycle to him. R2W1 was not cross examined by the appellant on the above aspect. Following the judgment of the Hon'ble Supreme Court in the case of **National Insurance Co. Ltd. vs. Swaran Singh, 2004 ACJ 1**, the learned Tribunal held that the appellant is not entitled to recovery rights against respondent No.8. The finding of the learned Tribunal in this regard is upheld.

13. The appeal is allowed and the award amount is reduced from Rs.13,44,400/- to Rs.7,94,343/- along with interest thereon @7.5% per annum from the date of filing of the claim petition till realization.

14. The claimants have already received the interim compensation of Rs.50,000/- from the Claims Tribunal and, therefore, they are now entitled to Rs.7,44,343/- along with interest from the date of filing of the claim petition i.e. 16th August, 2004 up to date which comes to Rs.10,54,290/- (Rs.7,44,343 + Rs.3,09,947).

15. The appellant has deposited a sum of Rs.17,76,331/- with the Registrar General of this Court in terms of order dated 18th September, 2009. The Registrar General is directed to transfer/remit a sum of Rs.10,54,290/- to UCO Bank A/c Smt. Manoj, Delhi High Court Branch, within a period of three weeks.

16. The remaining amount of Rs.7,22,041/- as well as statutory amount deposited by the appellant along with this appeal be refunded back to the appellant through Counsel within four weeks.

17. Upon receipt of Rs.10,54,290/-, UCO Bank is directed to release Rs.1,04,290/- to respondents No.1,3 and 4 in equal shares. The remaining amount of Rs.9,50,000/- be kept in fixed deposit in the following manner:-

- (i.) Fixed deposit for Rs.50,000/- in the name of respondent No.1 for a period of one year.
- (ii.) Fixed deposit for Rs.50,000/- in the name of respondent No.3 for a period of two years.
- (iii.) Fixed deposit for Rs.50,000/- in the name of respondent No.4 for a period of three years.
- (iv.) Fixed deposit for Rs.50,000/- in the name of respondent No.1 for a period of four years.
- (v.) Fixed deposit for Rs.50,000/- in the name of respondent No.3 for a period of five years.
- (vi.) Fixed deposit for Rs.50,000/- in the name of respondent No.4 for a period of six years.
- (vii.) Fixed deposit for Rs.50,000/- in the name of respondent No.1 for a period of seven years.
- (viii.) Fixed deposit for Rs.50,000/- in the name of respondent No.1 for a period of eight years.
- (ix.) Fixed deposit for Rs.50,000/- in the name of respondent No.1 for a period of nine years.

(x.) Fixed deposit for Rs.2,50,000/- in the name of respondent No.2 till she attains the age of 20 years.

(xi.) Fixed deposit for Rs.2,50,000/- in the name of respondent No.6 till she attains the age of 20 years.

18. The interest on all the aforesaid fixed deposits shall be paid monthly by transferring the same to the Savings Bank Account of the respondent No.1. The respondent No.1 has a Savings Bank Account at Central Bank, Garhi, Distt. Bhind, M.P. UCO Bank is directed to transfer/remit the monthly interest to the Savings Bank Account of respondent No.1. Respondent No.1 shall provide the account number directly to UCO Bank, Delhi High Court Branch.

19. 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.

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

21. 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.

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

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

24. The respondents shall furnish all the relevant documents for opening of the Saving Bank Account and Fixed Deposit Account to UCO Bank, Delhi High Court Branch.

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

26. 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.

27. All pending CMs stand disposed of.

28. Copy of this order be given 'Dasti' to learned counsel for both the parties under signature of Court Master.

J.R. MIDHA, J

MARCH 05, 2010
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