

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

+ **FAO No.566/2001**

% Date of decision: 27th May, 2011

UNITED INDIA INSURANCE CO. LTD. ...Appellant
Through : Mr. M.K. Tiwari, Adv.

versus

SMT. DARSHAN DEVI AND ORS. ...Respondents
Through : Mr. Anil Goel and
Mr. Rajiv Kumar, 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 appellant challenged the award of the Claims Tribunal in this appeal whereas the respondents filed the cross-objections to seek the enhancement of the award amount. Vide order dated 24th March, 2004, the appeal was dismissed whereas the cross-objections were admitted.
2. The accident dated 2nd December, 1995 resulted in the death of Jaiveer Singh. The deceased was survived by his widow, a minor son aged 6 years and a minor daughter aged about 3 years and parents who filed the claim petition

before the Claims Tribunal. The father of the deceased died during the pendency of the claim petition.

3. The deceased was aged 27-1/2 years at the time of the accident and was working as a Head Constable with Delhi Police drawing a salary of Rs.3225/- apart from the perks and allowances as per Government Rules. The Claims Tribunal took the income of the deceased as Rs.5,000/- per month after taking the effect of Fifth Pay Commission which was implemented on 1st January, 1996, added 50% towards future prospects, deducted 1/3 towards the personal expenses of the deceased and applied the multiplier of 16 to compute the loss of dependency at Rs.9,60,000/-.

4. Learned counsel for the claimants/respondents urged the following grounds for enhancement of the compensation at the time of hearing of cross-objections:-

- (i) The personal expenses of the deceased be reduced from 1/3rd to 1/4th in terms of the judgment of the Hon'ble Supreme Court in the case of **Sarla Verma Vs. Delhi Transport Corporation, 2009 (6) Scale 129.**
- (ii) The multiplier be enhanced from 16 to 17 in terms of the judgment of the Hon'ble Supreme Court in the case of **Sarla Verma Vs. Delhi Transport Corporation** (supra).

- (iii) The income of the deceased be taken as Rs.8,000/- instead of Rs.5,000/-.
- (iv) The compensation be awarded towards loss of consortium, loss of love and affection, loss of estate and funeral expenses.

5. The Hon’ble Supreme Court has laid down the following principles for grant of compensation in death cases in the case of **Sarla Verma Vs. Delhi Transport Corporation, 2009 (6) Scale 129:-**

“I . MULTIPLIER

Age of the deceased (in years)	Multiplier
15 – 20	18
21 – 25	18
26 – 30	17
31 – 35	16
36 - 40	15
41 - 45	14
46 - 50	13
51 - 55	11
56 – 60	09
61 - 65	07
Above 65	05

II. DEDUCTION FOR PERSONAL AND LIVING EXPENSES

Deceased – unmarried

- (i) Deduction towards personal expenses. : 1/2 (50%)
- (ii) Deduction where the family of the bachelor is large and dependent on the income of the deceased. : 1/3rd (33.33%)

Deceased – married

- (i) 2 to 3 dependent family members. : 1/3rd
- (ii) 4 to 6 dependent family members. : 1/4th
- (iii) More than 6 family members : 1/5th

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| (iv) | Subject to the evidence to the contrary. | : Father, brother and sisters will not be considered as dependents. |
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III. FUTURE PROSPECTS

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| (i) | Permanent job below 40 years of age | : Actual salary – tax + 50% towards future prospects. |
| (ii) | Permanent job between 40 – 50 years | : Actual salary – tax + 30% towards future prospects. |
| (ii) | More than 50 years with permanent job. | : Actual salary only. No addition for future prospects. |
| (iv) | Deceased employed at a fixed salary (without provision for annual increments) | : Only actual income to be taken No addition. |

IV. NON-PECUNIARY DAMAGES

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| (i) | Compensation for loss of estate | : Rs.5,000/- to Rs.10,000/- |
| (ii) | Compensation for loss of consortium | : Rs.5,000/- to Rs.10,000/- |
| (iii) | Compensation for pain and sufferings and hardship | : Nil |
| (iv) | Funeral expenses, cost of transportation of body and medical expenses” | : Actual |

6. In the present case, the deceased aged 27-1/2 years left behind five dependant legal representatives, namely, widow, two minor children and parents. Applying the principles laid down in the case of **Sarla Verma Vs. Delhi Transport Corporation, 2009 (6) Scale 129**, the multiplier is enhanced from 16 to 17 and the personal expenses of the deceased are reduced from 1/3 to 1/4.

7. The deceased was working as Head Constable with Delhi Police at the time of the accident. PW-2, Head Constable Virender Singh proved the salary of the deceased for the month of November, 1995 was Rs.3,300/- as per Ex.PW-2/A. PW-2 further deposed that after implementation of Fifth Pay Commission, the salaries have been revised. PW-2 who was also the Head Constable deposed that his salary was revised to Rs.8,000/- per month with the implementation of Fifth Pay Commission. The Fifth Pay Commission was implemented with effect from 2nd June, 1996 i.e. within one month of death of the deceased and, therefore, the Claims Tribunal erred in taking the income of the deceased as Rs.5,000/- per month. In the case of **Sarla Verma Vs. DTC** (Supra), the Hon'ble Supreme Court has held that the Courts will usually take only the actual income at the time of death and the departure therefrom should be made only in rare and exceptional cases including special circumstances. This Court is of the view that since the Fifth Pay Commission was implemented within one month of death of the deceased, this case falls within the exception. It has been sufficiently proved by the evidence of PW-2 that the income of the deceased would have been Rs.8,000/- per month with the implementation of Fifth Pay Commission w.e.f. 2nd January, 1996 and, therefore, the income of the deceased is taken to be Rs.8,000/- per month.

8. Taking the income of the deceased to be Rs.8,000/- per month, adding 50% towards future prospects, deducting 1/4 towards personal expenses of the deceased and applying the multiplier of 17, the loss of dependency is computed at Rs.18,36,000/-.

9. The Claims Tribunal has not awarded any compensation for loss of consortium, loss of love and affection, loss of estate and funeral expenses. In the facts and circumstances of the case, Rs.10,000/- is awarded towards loss of consortium, Rs.10,000/- is awarded towards loss of love and affection, Rs.10,000/- is awarded towards loss of estate and Rs.5,000/- is awarded towards funeral expenses.

10. The claimants are entitled to total compensation of Rs.18,71,000/- (Rs.18,36,000/- towards loss of dependency + Rs.10,000 towards loss of consortium + Rs.10,000 towards loss of love and affection + Rs.10,000/- loss of estate + Rs.5,000/- towards funeral expenses).

11. The cross objections are allowed and the award amount is enhanced from Rs.9,60,000/- to Rs.18,71,000/-. The Claims Tribunal has awarded interest at the rate of 9% per annum which is not disturbed on the original award amount of Rs.9,60,000/-. However, on the enhanced award amount, the rate of interest shall be 7.5% per annum from the date of filing of the claim petition till realization.

12. Respondent No.1, Darshan Devi and her son Ashish are present in Court. Respondent No.1 submits that she has got Saving Bank Account bearing No.11075567119 with State Bank of India, Main Branch, Near District Court, Rohtak.

13. The enhanced award amount along with upto date interest be deposited by the appellant with State Bank of India, A/c Darshan Devi, Tis Hazari Court Branch by means of a cheque through Mr. H.S. Rawat, Relationship Manager, Tis Hazari Branch, Tis Hazari (Mb: 09717044322) within 30 days.

14. Upon the aforesaid amount being deposited with State Bank of India is directed to release 10% of the award amount to respondent No.1/widow of the deceased by transferring the same to her Saving Bank Account bearing No.11075567119 with State Bank of India, Main Branch, Near District Court, Rohtak and keep the remaining amount in fixed deposit in the aforesaid Branch in the following manner:-

- (i) Fixed deposit of 10% of the award amount for a period of one year in the name of respondent No.4.
- (ii) Fixed deposit of 10% of the award amount for a period of two years in the name of respondent No.2.

- (iii) Fixed deposit of 10% of the award amount for a period of three years in the name of respondent No.3.
- (iv) Fixed deposit of 10% of the award amount for a period of four years in the name of respondent No.1.
- (v) Fixed deposit of 10% of the award amount for a period of five years in the name of respondent No.1.
- (vi) Fixed deposit of 10% of the award amount for a period of six years in the name of respondent No.1.
- (vii) Fixed deposit of 10% of the award amount for a period of seven years in the name of respondent No.1.
- (viii) Fixed deposit of 10% of the award amount for a period of eight years in the name of respondent No.1.
- (ix) Fixed deposit of 10% of the award amount for a period of nine years in the name of respondent No.1.

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 accounts 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 original fixed deposit receipts shall be retained by the Bank in the safe custody. However, the original Pass Book shall be given to respondent No. 1 along with the photocopy of the FDRs. Upon the expiry of the period of each FDR, the Bank shall automatically credit the maturity amount in the Savings Account of the beneficiary.

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 of State Bank of India according to the convenience of respondent No. 1.

22. Respondent No. 1 shall furnish all the relevant documents to Mr. H.S. Rawat, Relationship Manager, Tis Hazari Branch, Tis Hazari Court, New Delhi.

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

24. Copy of this order be also sent to Mr. H.S. Rawat, Relationship Manager, Tis Hazari Branch, Tis Hazari Court, New Delhi as well as to the Manager, State Bank of India, Main Branch, Near District Court, Rohtak for compliance.

MAY 27, 2011

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J.R. MIDHA, J