

R-5/(P-1)

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

+ **MAC.APP.No.705/2005**

% Date of decision: 27th January, 2012

DTC Appellant
Through : Ms. Saroj Bidawat, Adv.
versus

CHANDERWATI & ORS. Respondents
Through : Mr. Navneet Goyal, Adv.

CORAM:
HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT (ORAL)

MAC.APP.No.705/2005 and CM Nos.11977/2005 & 1196/2006

1. The appellant has challenged the award of the learned Tribunal whereby compensation of ₹5,40,000/- has been awarded to the respondents. The respondents have filed the cross-objections seeking enhancement of the award amount.
2. The accident dated 27th December, 2000 resulted in the death of Surinder Kumar. The deceased was crossing the Desh Bandhu Gupta road when he was hit by DTC bus bearing No.DHP 2853. The deceased was survived by his widow, mother and four children who filed the claim petition before the Claims Tribunal. The deceased was employed earning ₹6,000/- per month. The Claims Tribunal deducted 1/3rd towards personal expenses of the deceased and applied the

multiplier of 11 to compute the loss of dependency at ₹5,28,000/-. ₹4,000/- has been awarded towards funeral expenses and ₹8,000/- has been awarded towards loss of consortium. The total compensation awarded by the Claims Tribunal is ₹5,40,000/-.

3. The learned counsel for the appellant submits that the deceased was not hit by DTC bus bearing No.DHP-2853 but by a private bus bearing No.DL-1PA 4309 and, therefore, the finding of the Claims Tribunal holding the DTC liable to pay the compensation is erroneous. The learned Trial Court has considered the evidence of both the parties to arrive to a finding about the accident having caused by the DTC bus. PW-3 is the eye-witness who deposed that the accident in question was caused by the DTC bus in question. The Claims Tribunal also considered FIR - Ex.P-2, charge sheet - Ex.P-3, and site plan - Ex.P-4, according to which the accident was caused by the DTC bus. There was material contradiction in the testimony of the driver and conductor of the DTC bus who appeared as RW-1 and RW-2 respectively. Applying the test of preponderance of probabilities, the learned Tribunal held that the accident in question was caused by the DTC bus. The Claims Tribunal has discussed the entire evidence on record in paras 7 to 11 of the impugned award. There is no infirmity in

the findings of the Claims Tribunal.

4. The respondents are seeking enhancement of the award amount on the following grounds:-

- (i) The multiplier be enhanced from 11 to 13;
- (ii) The personal expenses of the deceased be reduced from $1/3^{\text{rd}}$ to $1/4^{\text{th}}$; and
- (iii) The compensation be awarded towards loss of love and affection and loss of estate.

5. The deceased was aged 46 years at the time of the accident and was survived by six legal representatives. Following the judgment of the Supreme Court in the case of **Sarla Verma Vs. Delhi Transport Corporation, 2009 (6) Scale 129**, the appropriate multiplier at the age of 46 years is 13 and the appropriate deduction towards personal expenses is $1/4^{\text{th}}$. The Claims Tribunal has also erred in not awarding compensation towards loss of love and affection and loss of estate. In terms of the judgment of the Supreme Court in the case of Sarla Verma (Supra), the multiplier is enhanced from 11 to 13 and the personal expenses of the deceased are reduced from $1/3^{\text{rd}}$ to $1/4^{\text{th}}$. The loss of dependency is enhanced from ₹5,28,000/- to ₹7,02,000/- ($₹6,000 \times 12 \times 13 \times 3/4$). ₹10,000/- is awarded towards loss of love and affection and ₹10,000/- is awarded towards loss of estate. The

respondents are entitled to total of ₹7,34,000/- (₹7,02,000 + ₹8,000 + ₹4,000 + ₹10,000 + ₹10,000). The break-up of ₹7,34,000/- is as under:-

Compensation towards loss of : ₹7,02,000
dependency

Compensation towards loss of : ₹8,000/-
consortium

Compensation towards funeral : ₹4,000/-
expenses

Compensation towards loss of : ₹10,000/-
love and affection

Compensation towards loss of : ₹10,000/-
estate

Total : ₹7,34,000/-

6. For the reasons as aforesaid, the appeal is dismissed and the cross-objections are allowed. The compensation awarded by the Claims Tribunal is enhanced from ₹5,40,000/- to ₹7,34,000/- along with interest @7% per annum from the date of filing of the petition till realization. The shares of the appellants in the enhanced award amount shall be equal.

7. The enhanced award amount along with up to date interest be deposited by the appellant with UCO Bank, Delhi High Court Branch by means of cheque/demand draft drawn in the name of UCO Bank A/c Nirmal.

8. Upon the aforesaid amount being deposited, the UCO Bank is directed to release 1/6th share of respondent No.1 to her by transferring the same to her Saving Bank Account. The shares of the remaining respondents be kept in fixed deposit in the following manner:-

- (i) Fixed deposit in the name of respondent No.2 in respect of her 1/6th share for a period of one year.
- (ii) Fixed deposit in the name of respondent No.3 in respect of her 1/6th share for a period of two years.
- (iii) Fixed deposit in the name of respondent No.4 in respect of her 1/6th share for a period of three years.
- (iv) Fixed deposit in the name of respondent No.5 in respect of her 1/6th share for a period of four years.
- (v) Fixed deposit in the name of respondent No.6 in respect of his 1/6th share for a period of five years.

9. The interest on the aforesaid fixed deposits shall be paid monthly by automatic credit of interest in the Savings Account of respondent No.2.

10. Withdrawal from the aforesaid account shall be permitted to respondent No.2 after due verification and the Bank shall issue photo Identity Card to the respondents to facilitate identity.

11. No cheque book be issued to respondent No.2 without the permission of this Court.
12. 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.2 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.
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 No.2, Bank shall transfer the Savings Account to any other branch according to the convenience of respondent No.2.
16. Respondent No.2 shall furnish all the relevant documents for opening of the Saving Bank Account and Fixed Deposit Account to Mr. M.S. Rao, AGM, UCO Bank, Delhi High Court Branch, New Delhi (Mobile No. 09871129345).
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.S. Rao, AGM, UCO Bank, Delhi High Court Branch, New Delhi (Mobile No. 09871129345) under the signature of Court Master.

19. The LCR be sent back forthwith.

J.R. MIDHA, J

JANUARY 27, 2012

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