

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

+ MAC.APP.No.295/2008 and CM No.13858/2008

% Reserved on : 31st August, 2012
Date of decision : 07th September, 2012

NATIONAL INSURANCE CO. LTD. Appellant
Through : Ms. Shantha Devi Raman,
Adv.
versus

RUKMINI GAUTAM & ORS Respondents
Through : Mr. R.K. Bachchan, Adv.
for R-1 to 6.
Mr. J.N. Aggarwal, Adv. for
R-8/DTC.

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

JUDGMENT

1. The appellant has challenged the award of the Claims Tribunal whereby the compensation of `6,36,000/- has been awarded to claimants/respondents No.1 to 6.
2. The accident dated 13th October, 2005 resulted in the death of Inder Pal Singh. The deceased was survived by his widow and five children who filed the claim petition before the Claims Tribunal. The deceased was aged 41 years at the time of the accident and was working as a conductor with Delhi Transport Corporation. The Claims Tribunal took the income of the deceased as `4,000/- per month in terms of the salary slip – Ex.PW1/5,

deducted 1/4th towards personal expenses of the deceased and applied the multiplier of 16 to compute the loss of dependency at `5,76,000/-. `30,000/- has been awarded towards loss of estate, funeral expenses and transportation of dead body, `10,000/- has been awarded towards loss of consortium and `20,000/- has been awarded towards medical expenses. The total compensation awarded is `6,36,000/-.

3. The learned counsel for the appellant has urged at the time of hearing of this appeal that the liability of the appellant is limited to `3,62,740/- (`4,000/- less 50% x 181.37) under the Workmen's Compensation Act, 1923 and the remaining compensation has to be paid by DTC, respondent No.8. The learned counsel for the appellant has referred to and relied upon the Insurance policy in which the appellant has charged the premium of `50/- for limited liability for conductor and driver at the rate of `25/- each under the Workmen's Compensation Act, 1923.

4. The learned counsel for Delhi Transport Corporation has submitted that the liability of the appellant is unlimited. However, the learned counsel is not able to substantiate as to how the liability of the appellant is unlimited as the policy in question is a third party policy and the appellant has charged the premium for the statutory liability in respect of the conductor and driver under the proviso to Section 147 of the Motor Vehicles Act, 1988.

5. Under the proviso to Section 147 of the Motor Vehicles Act, 1988, the Insurance policy in respect of a motor vehicle is required to compulsorily insure the liability under the Workmen's

Compensation Act, 1923 in respect of the employees on the vehicle. The appellant has charged the following premium in the policy in question:-

“Basic premium : ` 1,860/-

Liability premium for 59
passengers @ ` 138/- each : ` 8,142/-

Liability premium for conductor
and driver @ ` 25/- each under
the Workmen’s Compensation Act : ` 50/-.”

6. The appellant has charged the premium to cover the liability under the Workmen’s Compensation Act and the remaining liability has to be borne by DTC. The deceased was aged 41 years at the time of the accident and was earning ` 4,000/- per month. Taking 50% of the income of the deceased and applying the relevant factor of 181.37, the liability under the Workmen’s Compensation Act is computed to be ` 3,62,740/-.

7. The claimants/respondents No.1 to 6 seek enhancement of the award amount. The learned counsel for claimants/respondents No.1 to 6 submits that no compensation has been awarded for loss of love and affection. The learned counsel further submits that the rate of interest be enhanced from 7.5% per annum to 9% per annum in terms of the judgment of the Supreme Court in *Municipal Corporation of Delhi v. Association of Victims of Uphaar Tragedy*, AIR 2012 SC 100.

8. The learned counsel for the appellant submits that claimants/respondents No.1 to 6 have not filed the cross-objections

and, therefore, the enhancement is not warranted. The appellant's submission in this regard is contrary to law. It is well settled that the Appellate Court has the jurisdiction to enhance the award even in the absence of cross-objections under Order XLI Rule 33 of the Code of Civil Procedure. Reference in this regard may be made to the recent judgment of this Court in *National Insurance Co. Ltd. v. Komal*, MANU/DE/2870/2012 in which this Court has referred to and followed catena of judgments of the Supreme Court and other High Courts.

9. The Claims Tribunal has not awarded any compensation for loss of love and affection. `10,000/- is awarded for loss of love and affection. The rate of interest is enhanced from 7.5% per annum to 9% per annum in terms of the judgment of the Supreme Court in *Municipal Corporation of Delhi v. Association of Victims of Uphaar Tragedy* (supra). The claimants shall be entitled to `6,46,000/- out of which the liability of the appellant is restricted to `3,62,740/- along with interest @ 9% per annum from the date of filing of the claim petition till realization and the remaining liability shall be of DTC.

10. The appeal is allowed. The award in favour of claimants/respondents No.1 to 6 is enhanced from `6,36,000/- to `6,46,000/- along with interest @ 9% per annum from the date of filing of the claim petition till realization out of which the liability of the appellant is held to be `3,62,740/- along with interest @ 9% per annum from the date of filing of the claim petition till realization and the remaining liability is held to be of DTC.

11. The appellant has deposited a sum of `6,70,214/- with the Registrar General of this Court in terms of the order dated 1st August, 2008 on 30th August, 2008 out of which 50% has been released to the claimants/respondents No.1 to 6 and the remaining amount is lying in fixed deposit. The liability of the appellant in terms of this judgment as on 30th August, 2008 is determined to be `4,45,251/- as per the break-up given hereunder:-

Principal amount	:	`3,62,740/-
Interest @9% per annum from the date of filing of the claim petition i.e. 20 th February, 2006 to 30 th August, 2008	:	`82,511/-
Total		: <u>`4,45,251/-</u>

12. The appellant is entitled to refund of `2,24,963/- (`6,70,214 – `4,45,251). The Registrar General is directed to refund a sum of `2,24,963/- along with interest which has accrued thereon in the fixed deposit to the appellant within a period of four weeks. The remaining amount along with interest which has accrued thereon be sent to the UCO Bank by means of a cheque drawn in the name of UCO Bank A/c Rukmani Gautam.

13. Respondent No.8 – Delhi Transport Corporation is directed to deposit a sum of `2,83,730/- (`6,46,000 - `3,62,270) along with interest thereon @9% per annum from the date of filing of the claim petition i.e. 20th February, 2006 up to the date of deposit with UCO Bank, Delhi High Court Branch by means of a cheque drawn in the name of UCO Bank A/c Rukmani Gautam within a period of 30 days.

14. Upon the aforesaid deposit being made, UCO Bank is directed to release 10% of the total amount (amount to be deposited by DTC + the amount to be transferred by the Registrar General) to respondent No.1 by transferring the same to her Saving Bank Account. 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.2 for a period of one year.
- (ii) Fixed deposit in respect of 10% of the amount in the name of respondent No.3 for a period of two years.
- (iii) Fixed deposit in respect of 10% of the amount in the name of respondent No.4 for a period of three years.
- (iv) Fixed deposit in respect of 10% of the amount in the name of respondent No.5 for a period of four years.
- (v) Fixed deposit in respect of 10% of the amount in the name of respondent No.6 for a period of five years.
- (vi) Fixed deposit in respect of 10% of the amount in the name of respondent No.1 for a period of six years.
- (vii) Fixed deposit in respect of 10% of the amount in the name of respondent No.1 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.

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 original fixed deposit receipts shall be retained by the Bank in the safe custody. However, the original Pass Book shall be given to the beneficiaries 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 beneficiaries.
 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 the beneficiaries, Bank shall transfer the Savings Account to any other branch according to their convenience.
 22. The beneficiaries 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).
21. List for compliance on 5th October, 2012.

23. Copy of this judgment be sent to Mr. M.S. Rao, AGM, UCO Bank, Delhi High Court Branch, New Delhi (Mobile No.09871129345).

J.R. MIDHA, J

SEPTEMBER 07, 2012