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

% **Date of Decision: 06th September, 2016**

\+ MAC.APP. 935/2013 and C.M. Appl. 21068/2016

UNITED INDIA INSURANCE CO. LTD ..... Appellant

Through: Mr. Abhishek K. Gola, Mr. C.K. Gola and Mr. Sheetanshu, Advs.

versus

SOMENATH BHATTACHARYA & ORS ..... Respondents

Through: Mr. Gurmit Singh Hans, Ms. Aarti Manchanda and Ms. Richa Verma, Advs. for R1 to R2.

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

JUDGMENT (ORAL)

1. The appellant has challenged the award of the Claims Tribunal whereby compensation of Rs.23,17,800/- has been awarded to the claimants/respondents No.1 to 3. The appellant seeks reduction of the award amount.

2. On 05th October, 2011 at about 11:20 pm, Sanjeev Bhattacharya was going on his motorcycle on the Ring Road, when he hit a stationary Tata Indigo car bearing No.DL-1RY-2585 parked in the middle of the road without any parking lights and indicator which resulted in fatal injuries. The deceased was aged 28 years at the time of the accident and was survived by his parents who filed the claim petition before the Claims Tribunal. The deceased was working as a salesman and was drawing salary of Rs.10,700/- per month. The Claims Tribunal added 50% towards future prospects, deducted 1/3rd towards his personal expenses and applied the multiplier of 17 to compute loss of dependency as Rs.21,82,800/-, Rs.1,00,000/- has been awarded towards the loss of love and affection, Rs.10,000/- towards the loss of estate and Rs.25,000/- towards funeral expenses. The total compensation

of Rs.23,17,800/- has been awarded by the Claims Tribunal.

3. Learned counsel for the appellant has urged at the time of the hearing of the appeal that the deceased was contributory negligent and, therefore, compensation is liable to be reduced on account of the contributory negligence. It is further submitted that the multiplier should be applied according to the age of the mother of the deceased instead of age of the deceased.

4. Learned counsel for the claimants/respondents No.1 and 2 disputes that the deceased was in any manner contributory negligent, as it was not possible for the deceased to have been aware of offending vehicle position because the offending vehicle was parked on the elevation of the flyover without any parking signs.

5. There is merit in the contentions urged by the learned counsel for the appellant. Since the offending vehicle was stationary, 100% negligence cannot be attributed to the offending vehicle. Taking into consideration all the grounds urged by learned counsel for the appellant, this Court is of the view that the compensation awarded by the Claims Tribunal is liable to be reduced by Rs.5,00,000/-.

6. The appeal is allowed and the award of the Claims Tribunal is reduced from Rs.23,17,800/- to Rs.18,17,800/- along with interest @ 9% per annum from the date of the filing of the claim petition i.e. 07th December, 2011 up to realisation.

7. The appellant has deposited Rs.27,17,620/- on 18th November, 2013 out of which Rs.7,00,000/- has been released to respondents No.1 and 2. Rs.22,73,170/- is lying in FDR No.15530310537749 and the amount as on 30th June 2016 as per the Manager of UCO Bank, Delhi High Court is Rs.24,52,718/-.

8. As per the calculation done by the Accounts Officer, a sum of

Rs.7,45,294/- is liable to be refunded back to the appellant (Rs.5,00,000/- towards the principal amount and Rs.88,099/- towards the interest @ 9% per annum upto the date of deposit of the award amount and interest given by the bank on the FDR thereafter (Rs.1,10,094/- towards the interest @8.75% from 23rd November 2013 to 29th May 2015, Rs.2,188/- towards the interest @5.25% from 30th May 2015 to 1st July 2015, Rs.20,000/- towards the interest @8% from 2nd July 2015 to 1st January 2016, Rs.18,375/- towards the interest @7.35% from 2nd January 2016 to 1st July 2016 and Rs.6,538/- towards the interest @7.25% from 2nd July 2016 to till date).

9. The Registrar General is directed to refund Rs.7,45,294/- to the appellant within a period of 4 weeks. The statutory amount deposited by the appellant be also refunded back to the appellant.

10. The Registrar General is directed to instruct the UCO Bank, Delhi High Court Branch to release 10% of the balance amount lying in the FDR No.15530310537749 to respondents No.1 and 2 in equal shares by transferring the same to their individual savings bank accounts and keep 90% amount in fixed deposits in the following manner:

Sr. No.	**Duration of FDR**	**Resp. 1 (%)**	**Resp. 2 (%)**
1.	1 year	4 %	5%
2.	2 years	4%	5%
3.	3 years	4%	5%
4.	4 years	4%	5%
5.	5 years	4%	5%
6.	6 years	4%	5%
7.	7 years	4%	5%
8.	8 years	4%	5%
9.	9 years	4%	5%
10.	10 years	4%	5%
TOTAL		**40%**	**50%**
GRAND TOTAL		**90%**	

11. Respondents No.1 & 2 shall approach the UCO Bank, Delhi High Court Branch for completing the formalities for the disbursement of the award in terms of this order.

12. The monthly interest on the FDRs of respondents No.1 and 2 shall be credited in their individual savings bank accounts.

13. At the time of maturity, the fixed deposit amount shall be automatically credited in the individual savings bank accounts of the beneficiaries.

14. All the original FDRs shall be retained by UCO Bank, Delhi High Court Branch. However, the photocopies of the same shall be provided to the claimants/respondents No.1 and 2.

15. No cheque book or debit card be issued to the claimants/respondents No.1 & 2 without permission of this Court.

16. No loan or advance or pre-mature discharge shall be permitted without the permission of this Court.

17. The claimants/respondents No.1 and 2 shall approach the UCO Bank for completing the formalities for the disbursement of the award amount in terms of this order.

18. UCO Bank, Delhi High Court Branch shall ensure that the savings bank accounts of respondents are individual accounts and not joint accounts.

19. C.M. Appl. 21068/2016 is disposed of.

20. Copy of this judgement be given *dasti* to learned counsels for the parties under signature of Court Master.

J.R. MIDHA, J.

SEPTEMBER 06, 2016
ak/rsk