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

% **Date of Decision: 12th August, 2016**

\+ MAC.APP. 1146/2013

THE NEW INDIA ASSURANCE CO LTD ..... Appellant
Through: Mr. J.P.N. Shahi, Advocate

versus

SMT PREETI & ORS ..... Respondents
Through: Mr. Arun Srivastava, Advocate for respondents no.1 and 3

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.9,01,132/- has been awarded to respondents no.1 to 3.

2. On 20th February, 2008 at about 6.30 pm, Ajay was going on his motor cycle from Burari towards Jahangir Puri when he was hit by blue line bus no. DL-1PB-0115 in front of MCD flats on Prayas NGO Road, Jahangir Puri, Delhi which resulted in his death. The deceased aged 28 years was working as Copper Wire Drawing Machine Operator with G.L. Auto Industries earning Rs.6,000/- per month. The deceased was survived by his widow and parents who filed the claim petition before the Claims Tribunal.

3. The Claims Tribunal took minimum wages of Rs.3,633/- per month added 50% towards future prospects, deducted 1/3rd towards the personal expenses of the deceased and applied the multiplier of 17 to compute the loss of dependency at Rs.7,41,132/-. The Claims Tribunal awarded Rs.1,00,000/- towards loss of consortium, Rs.25,000/- towards loss of love

and affection, Rs.10,000/- towards loss of estate and Rs.25,000/- towards funeral expenses. Total compensation awarded is Rs.9,01,132/- along with interest @ 75.% per annum.

4. The appellant has challenged the impugned award on the sole ground that 50% should not be added to the minimum wages to compute the income of the deceased.

5. The Claims Tribunal has taken the income of the deceased as Rs.3,633/- per month and 50% has been added towards future prospects. The total income has been taken as Rs.5,449/-[Rs.3,633 + Rs.1,816/-]. The occupation of the deceased has been proved on record as Copper Wire Drawing Machine Operator with G.L. Auto Industries. The claimants proved the income of the deceased by examining the employer as PW-2 who deposed that the deceased was working with G.L. Auto Industries for 1½ years. Since PW-2 did not prove the documentary evidence, the minimum wages were taken into consideration.

6. This Court is of the view that the occupation of the deceased having been sufficiently proved, the income of the deceased can be safely presumed to Rs.5,449/- per month. It is not mandatory to resort the minimum wages in each and every case. Reference in this regard may be made to the judgment of the Supreme Court in ***Municipal Corporation of Delhi v. Association of Victims of Uphaar Tragedy,*** AIR 2012 SC 100 in which 59 persons died in *Uphaar tragedy* and the Supreme Court granted compensation of Rs.10,00,000/- to the victims of above 20 years of age and Rs.7,50,000/- to the victims below 20 years of age on the basis of multiplier method. The Supreme Court applied the multiplier of 15 and deducted 1/3rd towards the personal expenses. The income of the victims aged more than 20 years was assumed to be Rs.8,333/- per month and that of victims aged less than 20 years was assumed to be Rs.6,249/- per month. The computation of the

compensation awarded by the Supreme Court would be as under :-

<u>For victims aged more than 20 years:-</u>

(Rs.8,333/- less 1/3rd)x 12 x 15 = Rs.10 lakhs.

<u>For victims aged less than 20 years:-</u>

(Rs.6249/- less 1/3rd) x 15 = Rs.7.5 lakhs.

7. It is relevant to note that the *Uphaar tragedy* took place on 13th June, 1997 and the minimum wages at the relevant time were less than Rs.2600/-. Although there was no proof of the income of the victims, the Supreme Court did not find it proper to apply the minimum wages.

8. This Court has applied the principles laid down in *Uphaar tragedy* case to compute the compensation in ***United India Insurance Co. V. Kanwar Lal,*** 2012 SCC Online Del 2411, ***New India Assurance Co. Ltd. v. Bal Kishan Pawar,*** 2012 SCC Online Del 3201, ***National Insurance Co. Ltd. v. Chander Dutt,*** 2012 SCC Online Del 2412, ***National Insurance Co. Ltd. v. Sewa Ram,*** 2012 SCC Online Del 2413 and ***National Insurance Co. Ltd. v. Komal***, 2014 ACJ 1540, ***National Insurance Co. Ltd. v. Gaje Singh***, 2012 ACJ 2346 and ***National Insurance Co. Ltd. v. Bhateri***, 2012 SCC Online Del 2409.

9. Applying the principles laid down in *Uphaar tragedy* case, the income of the deceased is presumed to be Rs.5,449/-. Taking the income of the deceased as Rs.5,449/- and considering the other factors as taken by the Claims Tribunal, the compensation of Rs.9,01,132/- awarded by the Claims Tribunal is upheld.

10. There is no merit in the appeal which is hereby dismissed. Applying Section 167 of the Evidence Act, the award of the learned Tribunal is upheld for the reasons stated above.

11. The Claims Tribunal has awarded interest @ 7.5% per annum which is of a lower side. The Supreme Court has consistently awarded interest @

9% per annum. The rate of interest is enhanced from 7.5% per annum to 9% per annum.

12. The appellant has deposited the entire award amount with the Registrar General of this Court in terms of 19th December, 2013 out of which 80% amount has been released to the respondents no.1 to 3.

13. Learned counsel for respondents no.1 and 3 submits that respondent no.2 has expired and her share be released to respondents no.1 and 3 in equal shares.

14. The Registrar General is directed to release the balance 20% award amount to respondents no.1 and 3 in equal shares.

15. With respect to the amount released earlier in terms of order dated 19th December, 2013, UCO Bank, Delhi High Court Branch is directed to release the FDR amount upon maturity in equal shares to respondents no.1 and 3.

16. The enhanced interest amount be deposited by the appellant with UCO Bank, Delhi High Court Branch by means of a cheque drawn in the name of UCO Bank A/c Preeti. Upon the deposit being made, the UCO Bank shall transfer the amount to respondents no.1 and 3 in equal shares.

17. After deposit of the enhanced interest amount, the Accounts Officer of this Court shall verify whether the amount deposited earlier as well as being deposited now has been properly computed and if so, the statutory amount be refunded back to the appellant. However, in the event of any short deposit, the Registry shall deduct the same from the statutory amount and send the same to respondents no.1 and 3 through UCO Bank and balance statutory amount be refunded back to the appellant.

18. Copy of this judgment be given *dasti* to counsel for the parties under the signature of the Court Master.

J.R. MIDHA, J.

AUGUST 12, 2016
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