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

% **Date of Decision: 17th November, 2016**

+ **MAC.APP. 584/2015 & CM No.13269/2015**

HDFC ERGO GENERAL INSURANCE CO LTD..... Appellant

Through: Mr. A.K. Soni, Adv.

versus

SURAJ PAL & ORS Respondents

**Through: Mr. Anshuman Bal, Adv. for
R1.**

**Mr. Rohit Singha, Adv. for R2
and R3.**

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.12,33,272/- has been awarded to respondent No.1.

2. The accident dated 23rd October, 2011 resulted in the death of Tarun. The deceased was aged 21 years at the time of the accident and was survived by his parents who filed the claim petition. The mother of the deceased expired during the pendency of the claim petition. The Claims Tribunal took the minimum wages of Rs.6,656/-, added 50% towards future prospects, deducted 50% towards his personal expenses and applied the multiplier of 18 to compute the loss of dependency at

Rs.10,78,272/-. The Claims Tribunal awarded Rs.1,00,000/- towards loss of love and affection, Rs.10,000/- towards loss of estate, and Rs.20,000/- towards litigation charges and Rs.25,000/- towards funeral expenses. The total compensation awarded by the Claims Tribunal is Rs.12,33,272/-.

3. Learned counsel for the appellant urged at the time of hearing that the future prospects should not be taken into consideration and the multiplier be applied according to the age of the parents. It is further submitted that the penal interest of 12% per annum be set aside as the appellant had filed the appeal before this Court.

4. There is merit in the contentions urged by learned counsel for the appellant. However, the reduction below Rs.10,00,000/- is not warranted in view of 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* in 1997 and the Supreme Court granted compensation of Rs.10,00,000/- to the victims above 20 years of age. The findings of the Supreme Court are reproduced hereunder :-

“38. ... It can be by way of making monetary amounts for the wrong done or by way of exemplary damages, exclusive of any amount recoverable in a civil action based on tortious liability. But in such a case it is improper to assume admittedly without any basis, that every person who visits a cinema theatre and purchases a balcony ticket should be of a high income group person. In the year 1997, Rs. 15,000 per month was rather a high income. The movie was a new movie with patriotic undertones. It is known that zealous movie goers, even from low income groups, would not mind

*purchasing a balcony ticket to enjoy the film on the first day itself. To make a sweeping assumption that every person who purchased a balcony class ticket in 1997 should have had a monthly income of Rs. 15,000 and on that basis apply high multiplier of 15 to determine the compensation at a uniform rate of Rs. 18 lakhs in the case of persons above the age of 20 years and Rs. 15 lakhs for persons below that age, as a public law remedy, may not be proper. While awarding compensation to a large group of persons, by way of public law remedy, it will be unsafe to use a high income as the determinative factor. The reliance upon Neelabati Behera (AIR 1993 SC 1960 : 1993 AIR SCW 2366) in this behalf is of no assistance as that case related to a single individual and there was specific evidence available in regard to the income. Therefore, the proper course would be to award a uniform amount keeping in view the principles relating to award of compensation in public law remedy cases reserving liberty to the legal heirs of deceased victims to claim additional amount wherever they were not satisfied with the amount awarded. **Taking note of the facts and circumstances, the amount of compensation awarded in public law remedy cases, and the need to provide a deterrent, we are of the view that award of Rs. 10 lakhs in the case of persons aged above 20 years and Rs. 7.5 lakhs in regard to those who were 20 years or below as on the date of the incident, would be appropriate. We do not propose to disturb the award of Rs. 1 lakh each in the case of injured. The amount awarded as compensation will carry interest at the rate of 9% per annum from the date of writ petition as ordered by the High Court, reserve liberty to the victims or the LRs. of the victims as the case may be to seek higher remedy wherever they are not satisfied with the compensation. Any increase shall be borne by the Licensee (theatre owner) exclusively.***

(Emphasis Supplied)

5. The appeal is partially allowed and the awarded amount is reduced from 12,33,272/- to Rs.10,00,000/- along with interest @ 9% per annum from the date of institution of the claim petition i.e. 18th November, 2011. The penal interest of 12% imposed by the Claims Tribunal is set aside.

6. The appellant has deposited the entire award amount with the Registrar General of this Court in terms of the order dated 28th July, 2015 out of which 50% amount has been released to respondent No.1 and the balance amount is lying in fixed deposit.

7. As per the calculation done by the Accounts Officer, the respondent No.1 is entitled to a sum of Rs.5,69,495/- out of balance amount lying in the FDR. The Registrar General is directed to discharge the FDR and instruct UCO Bank, Delhi High Court Branch to disburse Rs.5,69,495/- to respondent No.1 by transferring 10% to his individual savings bank account and keep 90% in seven FDRs of equal amount for the period 1 year, 2 years, 3 years, 4 years, 5 years, 6 years and 7 years in the name of respondent No.1. The balance FDR amount, after disbursing Rs.5,69,495/- to respondent No.1 be refunded to the appellant.

8. The monthly interest on the FDRs shall be credited in the savings bank account of respondent No.1.

9. At the time of maturity, the fixed deposit amount shall be credited in the individual savings bank account of respondent No.1.

10. All the original FDRs shall be retained by UCO Bank, Delhi High Court Branch. However, the photocopies of the same shall be

provided to respondent No.1.

11. No cheque book or debit card be issued to the respondent No.1 without permission of this Court.

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

13. UCO Bank, Delhi High Court Branch shall ensure that the savings bank account of respondent No.1 is an individual account and not joint account.

14. The statutory amount deposited by the appellant along with the appeal be also refunded back to the appellant.

15. Pending application is disposed of.

16. Copy of this judgment be given *dasti* to learned counsel for the appellant under signature of the Court Master.

J.R. MIDHA, J.

NOVEMBER 17, 2016
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