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

% **Date of Decision: 09th August, 2016**

\+ MAC.APP. 981/2015 & CM No.31038/2015

THE ORIENTAL INSURANCE CO LTD ..... Appellant
Through: Mr. A.K. Soni, Adv.

versus

SUMAN & ORS ..... Respondents
Through: Mr. S.N. Parashar, Adv. for R1 to R6.

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.11,30,418.88 has been awarded to claimants/respondents No.1 to 6.

2. The accident dated 04th August, 2005 resulted in the death of Satish, hereinafter referred as deceased, who was survived by his widow, two daughters, one son and parents, who filed the claim petition. The deceased was working as a driver earning Rs.4,500/- per month. However, the Claims Tribunal took the minimum wages of Rs.3589.90 per month, added 50% towards future prospects, deducted 1/4th towards personal expenses and applied the multiplier of 16 to compute the loss of dependency at Rs.7,75,418/-. The Claims Tribunal awarded Rs.50,000/- to each of the claimants towards loss of love and affection, Rs.25,000/- towards funeral expenses, Rs.10,000/- towards loss of consortium and Rs.20,000/- towards loss of estate. The total compensation awarded by Claims Tribunal is Rs.11,30,418.88.

3. The appellant has challenged the impugned award on the two grounds, first that 50% of future prospects should not be awarded and second that the compensation of Rs.50,000/- for loss of love and affection to each of the claimants is on a higher side.

4. The Claims Tribunal has taken the minimum wages of Rs.3,589.90 and after adding 50% towards the future prospects, the total income of the deceased has been taken as Rs.5,384.85 (Rs.3589.90 + Rs.1,794.95). This Court is of the view that the occupation of the deceased as a professional driver having been sufficiently proved, the income of the deceased can be safely presumed as Rs.5,384.85 per month even if future prospects are not awarded. 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 :-

For victims aged more than 20 years:-

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

For victims aged less than 20 years:-

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

5. 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.

6. 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.

7. Applying the principles laid down in *Uphaar tragedy* case, the income of the deceased is presumed to be Rs.5,384.85. With respect to the compensation for love and affection, the Claims Tribunal has awarded Rs.50,000/- to each of the six claimants does not warrant any interference, considering that lower compensation has been awarded towards loss of consortium and loss of estate. Applying Section 167 of the Evidence Act, the award of the learned Tribunal is upheld for the reasons stated above.

8. There is no merit in the appeal which is hereby dismissed.

9. The appellant has deposited entire award amount with the UCO Bank, Delhi High Court Branch out of which 50% amount has been released to respondents No.1 to 6 and a sum of Rs.8,79,475.44 is lying in FDR with the UCO Bank, Delhi High Court Branch.

10. Para 18 of the award amount is modified to the extent that the share of respondents No.1 to 8 in the balance 50% amount lying with UCO Bank, Delhi High Court Branch shall be as under:-

(i) Respondent No.1 - 50%.

(ii) Respondents No.2 to 6 - 10 % each.

11. Respondent No.5 and 6 are aged about 80 and 81 years respectively and, therefore, their shares be released to them without any restriction of FDRs.

12. With respect to 50% share of respondent No.1, 10% share be released to her by transferring the same to her savings bank account and balance amount be kept in 9 fixed deposits of 10% each for 1, 2, 3, 4, 5, 6, 7, 8 & 9 years.

13. The shares of respondents No.2 to 4 shall be kept in a fixed deposit in the following manner:-

(i) Fixed deposit in the name of respondent No.2 for a period of 3 years.

(ii) Fixed deposit in the name of respondent No.3 for a period of 4 years.

(iii) Fixed deposit in the name of respondent No. 4 for a period of 5 years.

14. Monthly interest on the FDRs of respondent No.1 to 4 shall be credited in the savings bank account of respondent No.1.

15. At the time of maturity, the fixed deposit amount shall be automatically credited in the savings bank account of the beneficiaries.

16. 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 respondents.

17. No cheque book or debit card shall be issued to the claimants/respondents without permission of this Court.

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

19. The claimants/respondents shall approach the UCO Bank, Delhi High Court Branch for completing the formalities for the disbursement of the award amount in terms of this order.

20. The claimants/respondents are at liberty to approach this Court for release of further amount in case of any financial exigency.

21. Copy of this judgement be given *dasti* to parties under signatures of the Court Master.

22. Copy of this judgement be sent to respondents as well as UCO Bank, Delhi High Court Branch.

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

J.R. MIDHA, J.

AUGUST 09, 2016
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