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

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Date of Decision: 03rd July, 2017

+ **MAC.APP. 59/2015**

ORIENTAL INSURANCE CO LTD Appellant
Through: **Mr. Shoumik Majumdar, Advocate**

versus

SURAT DEVI & ORS Respondent
Through: **Mr. Pankaj Kumar Deval, Advocate**
for Respondents No.1 to 4

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

JUDGMENT (ORAL)

C.M. Appl. 21019/2017

1. Issue notice. Learned counsel for the appellant accepts notice.
2. The application is allowed and the name of respondent No.2 is corrected as Manju @ Aneeta Devi instead of Manju. The amended memo of parties be filed within one week.
3. Application is disposed of.

C.M. Appl. 21181/2017

4. Issue notice. Learned counsel for the appellant accepts notice.
5. The delay in filing the cross-objections is condoned. Application is disposed of.

C.M. Appl. 21180/2017

6. Issue notice. Learned counsel for the appellant accepts notice.

7. The cross-objections are taken up for hearing along with the appeal. Application is disposed of.

MAC. APP. 59/2015 and Cross-Objections

8. The Claims Tribunal has awarded compensation of Rs.7,31,188/- to respondents No.1 to 4 which is under challenge in this appeal. The appellant is seeking reduction of the award amount whereas respondents No.1 to 4 are seeking enhancement of the award amount.

9. On 12th July, 2009 at about 02:30 a.m., Faujdar Yadav was returning from Jaipur to Delhi in his car bearing No.DL-3C-AF-5357 when he hit a stationary truck bearing No.GJ-6Y-8038 from behind which resulted in fatal injuries. Faujdar Yadav was survived by his widow, one son, one daughter and father who filed the application for compensation before the Claims Tribunal. The deceased was aged 52 years and was a driver by profession earning Rs.8,000/- per month.

10. The Claims Tribunal took the minimum wages of Rs.4,358/- as income of the deceased, added 15% towards future prospects, deducted 1/4th towards his personal expenses and applied the multiplier of 11 to compute the loss of dependency as Rs.4,96,188/-. The Claims Tribunal awarded Rs.1 lakh towards loss of love and affection, Rs.1 lakh towards loss of consortium, Rs.10,000/- towards loss of estate and Rs.25,000/- towards funeral expenses. The total compensation awarded is Rs.7,31,188/-.

11. Learned counsel for the appellant urged at the time of the hearing that the deceased was contributory negligent and, therefore, the compensation amount is liable to be reduced on the ground of contributory negligence. It is further submitted that the future prospects should not be taken into consideration. The reduction is also sought on the ground that the personal

expenses of the deceased be increased from 1/4th to 1/3rd.

12. Learned counsel for respondents No.1 to 4 seeks enhancement of the award amount on the ground that the income of the deceased be taken as Rs.8,000/- per month. It is submitted that the deceased was a professional driver and was earning Rs.8,000/- per month at the time of the accident.

13. It is well settled that it is not mandatory to resort the minimum wages in each and every case. Reference in this regard may be made to the ***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:-

$(Rs.8,333/- \text{ less } 1/3^{rd}) \times 12 \times 15 = Rs.10 \text{ lakhs.}$

For victims aged less than 20 years:-

$(Rs.6249/- \text{ less } 1/3^{rd}) \times 15 = Rs.7.5 \text{ lakhs.}$

14. 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.

15. 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.

16. In the present case, the widow of the deceased appeared in the witness box as PW-1 and deposed that her husband was earning Rs.8,000/- per month. Applying the principles laid down in *Municipal Corporation of Delhi v. Association of Victims of Uphaar Tragedy*, AIR 2012 SC 100, the income of the deceased is taken as Rs.8,000/- per month. The deceased was a professional driver and the award of 15% towards future prospects is fair and reasonable. The deceased has left behind his widow, one son, one daughter and father and, therefore, the deduction of 1/4th amount towards the personal expenses does not warrant any interference. Taking the income of the deceased as Rs.8,000/- per month, adding 15% towards future prospects, deducting 1/4th towards personal expenses and applying the multiplier of 11 the loss of dependency is computed as Rs.9,10,800/-. Adding Rs.1 lakh towards loss of love and affection, Rs.1 lakh towards loss of consortium, Rs.25,000/- towards funeral expenses and Rs.10,000/- towards loss of estate, the total compensation is computed as Rs.11,45,800/-.

17. The Claims Tribunal has held the stationary truck solely responsible for the accident on the ground that the truck was parked on the middle of the

road. This Court is of the view that the deceased was contributory negligent for the accident to the extent of 36.18% and therefore, Rs.4,14,612/- is deducted towards the contributory negligence of the deceased. Respondents No.1 to 4 are entitled to the total compensation of Rs.7,31,188/- along with interest @ 9% per annum.

18. The appeal/cross-objections are allowed. However, the award amount of Rs.7,31,188/- is upheld for the reasons stated hereinabove.

19. The appellant has deposited the entire award amount with the Claims Tribunal out of which Rs.8 lakh has been directed to be disbursed vide order dated 01st March, 2017. Respondents No.1 to 4 are having their savings bank accounts with Purvanchal Bank, Captainganj, District Basti and State Bank of India, Captainganj Branch. The particulars of their savings bank account are as under: -

- (i) **Surat Devi** (widow) - A/c No.7507362277-0 with Purvanchal Bank, Captainganj Branch, IFSC Code:SBIN0RRPUGB.
- (ii) **Manju @ Aneeta Devi** (Daughter) - A/c No.7507362280-5 with Purvanchal Bank, Captainganj Branch, IFSC Code:SBIN0RRPUGB.
- (iii) **Rajesh Kumar** (Son) - A/c No.7507362306-9 with Purvanchal Bank, Captainganj Branch, IFSC Code:SBIN0RRPUGB.
- (iv) **Ram Sahay** (father) - A/c No.36713016845 with State Bank of India, Captainganj Branch, IFSC Code: SBIN0002533.

20. Punjab National Bank, Gokhale Market is directed to disburse Rs.8 lakh in terms of the order dated 01st March, 2017. Punjab National Bank, Gokhale Market is further directed to release the balance amount, after disbursing Rs.8 lakh in terms of order dated 01st March, 2017, to respondents no.1 to 4 in equal proportion by transferring the same to their savings bank accounts mentioned above.

21. List for reporting compliance on 18th September, 2017.
22. The Trial Court record be returned forthwith to enable the Claims Tribunal to disburse the award amount.
23. The pending applications are disposed of.
24. Copy of this order be sent to Punjab National Bank, Gokhale Market for compliance.
25. Copy of this order be given *dasti* to counsel for the parties under the signature of the Court Master.

July 03, 2017
rsk

J.R. MIDHA, J.

