$~15, 16, 35

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

% **Date of Decision:21st July, 2017**

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\+ MAC.APP. 544/2014 & CM 29493/2016

ORIENTAL INSURANCE CO LTD ..... Appellant

Through: Mr. Pankaj Seth, Advocate

versus

KALPANA BHATELA & ORS ..... Respondents

Through: Mr. Ravi Bhushan, Advocate for respondents no.1 and 2 along with respondent no.2 in person.

16

\+ MAC.APP. 555/2014

ORIENTAL INSURANCE CO LTD ..... Appellant

Through: Mr. Pankaj Seth, Advocate

versus

KIRAN & ORS ..... Respondents

Through: Mr. Sanjeev Srivastava, Advocate for respondents no.1 to 6.

35

\+ MAC.APP. 551/2014

ORIENTAL INSURANCE CO LTD ..... Appellant

Through: Mr. Pankaj Seth, Advocate

versus

SHIKARI YADAV & ORS ..... Respondents
Through:

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

JUDGMENT (ORAL)

1. The appellant has challenged three common awards of the Claims Tribunal whereby compensation has been awarded to claimants.

2. On 15^{th} June, 2008 at about 3 A.M., Rajinder Singh, Rahul@Raul Bhatela and Sumodo @ Ram Samujh Yadav were returning from Manesar to Delhi in vehicle No. DL 1M 1514. When the vehicle reached Raja Garden flyover, Near Batra Hospital, truck trala bearing no. HR 55 E 7627 suddenly stopped without giving any indication due to which No. DL 1M 1514 hit the back portion of the truck which resulted in the death of all the three persons. The legal representatives of the three deceased persons instituted the three separate claim petitions which were decided by a common award. The Claims Tribunal held the driver of the offending truck No.HR 55 E 7627 to be rash and negligent and awarded compensation of Rs.11,69,733/- to the legal representatives of Rajinder Singh, Rs.7,96,122/- to the legal representatives of Raul Bhatela and Rs.7,23,546/- to the legal representatives of Sumodo @ Ram Samujh Yadav.

MAC.APP.555/2014

3. Rajinder Singh was aged 34 years at the time of the accident and was working as a driver. Kiran, the widow of the deceased appeared in the

witness box and deposed that the deceased was working as a driver and was earning Rs.7,000/- per month out of which he was contributing Rs.6,000/- per month towards the household expenses. The Claims Tribunal took the minimum wages of Rs.4,057/-, added 50% towards inflation and deducted 1/5th towards the personal expenses of the deceased and applied the multiplier of 16 to compute the loss of dependency as Rs.9,34,733/-. The Claims Tribunal awarded Rs.1 lakh towards loss of care and guidance of minor child, 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.11,69,733/- along with interest @ 7.5% per annum.

4. Learned counsel for the appellant urged at the time of the hearing that Rajinder Singh was guilty of contributory negligence and therefore, the compensation awarded by the Claims Tribunal is liable to be reduced on the ground of contributory negligence. It is further submitted that the addition of 50% towards the future prospects is liable to be set aside. It is further submitted that the deduction towards personal expenses should be taken as 1/4th instead of 1/5th.

5. This Court is of the view that it is not mandatory to resort to 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 12 x 15 = Rs.7.5 lakhs.

6. 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/- but neither the Division Bench of this Court nor Supreme Court resorted to minimum wages to compute the compensation although neither the income nor the occupation of the victims was proved.

7. This Court is of the view that since the occupation of the deceased had been proved as a driver, applying the principles laid down in *Uphaar tragedy,* the income of the deceased is presumed to be Rs.7,000/- per month. Accepting the contention of learned counsel for the appellant, no future prospects are added to the aforesaid income of the deceased. Taking the income of the deceased as Rs.7,000/- per month, deducting 1/5th towards the personal expenses and applying the multiplier of 16, the loss of dependency is computed as Rs.10,75,200/-. Adding Rs.1 lakh towards the 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 is computed as Rs.13,10,200/-. The deceased is held to be contributory negligent to the extent of 10.7% and Rs.1,40,467/- is deducted

from the above compensation amount. Respondents are entitled to compensation of Rs.11,69,733/-.

8. The appeal is partially allowed. However, the compensation of Rs. 11,69,733/- is upheld for the reasons stated hereinabove. The Claims Tribunal has awarded interest @ 7.5% which is on a lower side. The Supreme Court as well as this Court are consistently awarding interest @ 9% per annum. The rate of interest is therefore, enhanced from 7.5% to 9% per annum.

9. The appellant has deposited the entire award amount with the Registrar General of this Court in terms of the order dated 24th July, 2014 out of which 80% amount has been released to respondents no.1 to 6 and the balance amount of 20% is lying in FDR with the Registrar General of this Court.

10. The Registry shall send a report to place on record the amount in the FDR and the interest accrued thereon on the next date of hearing.

11. Oriental Insurance Company is directed to deposit the enhanced interest amount with UCO Bank, Delhi High Court Branch by means of a cheque drawn in the name of UCO Bank A/c Kiran within four weeks.

12. List for disbursement of the award amount on 13th September, 2017.

13. The claimants shall remain present in Court on the next date of hearing along with the passbook of their savings bank accounts near the place of their residence as well as PAN cards and Aadhar cards.

MAC.APP.544/2014

14. Rahul@Raul Bhatela was aged 21 years at the time of the accident and was working with M/s. Shiva Motors as a mechanic earning Rs.6,000/-

per month. The Claims Tribunal took the minimum wages of Rs.4,081/-, added 50% towards future prospects and applied the multiplier of 18 to compute the loss of dependency as Rs.6,61,122/-. The Claims Tribunal awarded Rs.1 lakh towards loss of love and affection, Rs.10,000/- towards loss of estate and Rs.25,000/- towards funeral expenses. The total compensation awarded is Rs.7,96,122/- along with interest @ 7.5% per annum.

15. Learned counsel for the appellant urged at the time of the hearing of the appeal that future prospects of 50% should not be taken into consideration.

16. This Court is of the view that since the occupation of the deceased had been proved as a mechanic, applying the principles laid down in *Uphaar tragedy,* the income of the deceased is presumed to be Rs.7870.5 per month. Accepting the contention of learned counsel for the appellant, no future prospects are added to the aforesaid income of the deceased. Since the deceased was unmarried, the multiplier is reduced from 18 to 14. Taking the income of the deceased as Rs.7870.5, deducting 50% towards his personal expenses and applying the multiplier of 14, the loss of dependency is computed as Rs. 6,61,122/-. Adding Rs.1 lakh towards loss of love and affection, Rs.10,000/- towards loss of estate and Rs.25,000/- towards funeral expenses, the total compensation is computed as Rs.7,96,122/-.

17. The appeal is partially allowed. However, the compensation of Rs.7,96,122/- is upheld for the reasons stated hereinabove. The Claims Tribunal has awarded interest @ 7.5% which is on a lower side. The Supreme Court as well as this Court are consistently awarding interest @ 9% per annum. The rate of interest is therefore, enhanced from 7.5% to 9%

per annum.

18. The appellant has deposited the entire award amount with the Registrar General of this Court in terms of the order dated 24th July, 2014 out of which 80% amount has been released to respondents no.1 to 6 and the balance amount of 20% is lying in FDR with the Registrar General of this Court.

19. The Registry shall send a report to place on record the amount in the FDR and the interest accrued thereon on the next date of hearing.

20. Oriental Insurance Company is directed to deposit the enhanced interest amount with UCO Bank, Delhi High Court Branch by means of a cheque drawn in the name of UCO Bank A/c Kalpana Bhatela within four weeks.

21. List for disbursement of the award amount on 13th September, 2017.

22. The claimants shall remain present in Court on the next date of hearing along with the passbook of their savings bank accounts near the place of their residence as well as PAN cards and Aadhar cards.

MAC.APP.551/2014

23. Sumodo @ Ram Samujh Yadav was aged 18 years at the time of the accident and was working as a motor mechanic/helper with Pawan Ji Milk Dairy. The deceased was survived by his parents who filed the claim petition before the Claims Tribunal. The Claims Tribunal took the minimum wages of Rs.3,633/-, added 50% towards inflation and deducted 50% towards the personal expenses of the deceased and applied the multiplier of 18 to compute the loss of dependency as Rs.5,88,546/- The Claims Tribunal awarded Rs.1 lakh towards loss of love and affection, Rs.10,000/- towards

loss of estate and Rs.25,000/- towards funeral expenses. The total compensation awarded is Rs.7,23,546/- along with interest @ 7.5% per annum.

24. Learned counsel for the appellant urged at the time of the hearing of the appeal that future prospects of 50% should not be taken into consideration.

25. This Court is of the view that since the occupation of the deceased had been proved as a motor mechanic/helper with Pawan Ji Milk Dairy, applying the principles laid down in *Uphaar tragedy,* the income of the deceased is presumed to be Rs.7,006.5 per month. Accepting the contention of learned counsel for the appellant, no future prospects are added to the aforesaid income of the deceased is taken as Rs.7,006.5. Since the deceased was unmarried, the multiplier is reduced from 18 to 14. Taking the income of the deceased as Rs.7,006.5, deducting 50% towards his personal expenses and applying the multiplier of 14, the loss of dependency is computed as Rs. 5,88,546/-. Adding Rs.1 lakh towards loss of love and affection, Rs.10,000/- towards loss of estate and Rs.25,000/- towards funeral expenses, the total compensation is computed as Rs.7,23,546/-.

26. The appeal is partially allowed. However, the compensation of Rs.7,23,546/- is upheld for the reasons stated hereinabove. The Claims Tribunal has awarded interest @ 7.5% which is on a lower side. The Supreme Court as well as this Court are consistently awarding interest @ 9% per annum. The rate of interest is therefore, enhanced from 7.5% to 9% per annum.

27. The appellant has deposited the entire award amount with the Registrar General of this Court in terms of the order dated 24th July, 2014

out of which 80% amount has been released to respondents no.1 to 6 and the balance amount of 20% is lying in FDR with the Registrar General of this Court.

28. The Registry shall send a report to place on record the amount in the FDR and the interest accrued thereon on the next date of hearing.

29. Oriental Insurance Company is directed to deposit the enhanced interest amount with UCO Bank, Delhi High Court Branch by means of a cheque drawn in the name of UCO Bank A/c Shikari Yadav within four weeks.

30. List for disbursement of the award amount on 13th September, 2017.

31. The claimants shall remain present in Court on the next date of hearing along with the passbook of their savings bank accounts near the place of their residence as well as PAN cards and Aadhar cards.

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

JULY 21, 2017 **J.R. MIDHA, J.**
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