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

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Date of Decision: 20th March, 2019

+ MAC.APP. 1062/2017 & CAV 1041/2017 & CM APPL. 44006/2017

21 THE NEW INDIA ASSURANCE CO LTD Appellant

Through: Mr.R.K. Tripathi, Advocate

versus

SUNITA NAMDEV & ORS

..... Respondents

Through: Mr.C.M. Patel, Advocate

+ MAC.APP. 1071/2018 & CM APPL. 50086/2018

55 SUNITA NAMDEV & ORS

..... Appellants

Through: Mr.C.M. Patel, Advocate

versus

RAMJI BHAI PATEL @ SHERE PATEL & ORS

(THE NEW INDIA ASSURANCE CO LTD)

..... Respondents

Through: Mr.R.K. Tripathi, Advocate

JUDGEMENT (ORAL)

1. Both the parties have challenged the award of the Claims Tribunal whereby compensation of Rs.21,01,000/- has been awarded by the Claims Tribunal.

2. The accident dated 02nd December, 2012 resulted in the death of Santosh Namdev. The deceased aged 28 years at the time of the accident and was working as a tailor. It was claimed that deceased was earning Rs.15,000/- per month. The deceased was survived by his widow, four minor

sons and parents who claimed compensation.

3. The Claims Tribunal took the income of the deceased as Rs.5703.60 per month equivalent to the minimum wages in Madhya Pradesh, deducted 1/5th towards the personal expenses of the deceased and applied the multiplier of 16 to compute the loss of dependency as Rs.8,76,072.96.

4. The Claims Tribunal awarded Rs.6,00,000/- towards loss of love and affection, Rs.1,00,000/- towards loss of consortium, Rs.1,00,000/- towards loss of estate, Rs.4,00,000/- towards loss of guidance and Rs.25,000/- towards funeral expenses. Total compensation awarded is Rs.21,01,000/-.

5. Learned counsel for the appellant in MAC.APP. 1062/2017 urged at the time of hearing that compensation for loss for love and affection and for loss of guidance are not permissible heads. It is further submitted that compensation awarded towards loss of consortium, loss of estate and funeral expenses be reduced to Rs.40,000/-, Rs.15,000/- and Rs.15,000/- respectively, in terms of *National Insurance Co. Limited v. Pranay Sethi* 2017 SCC Online SC 1270.

6. Learned counsel for the appellant in MAC.APP. 1071/2018 urged at the time of the hearing that income of the deceased be taken as Rs.15,000/- per month. It is submitted that claimants are entitled to addition of 40% towards future prospects in terms of *National Insurance Co. Limited v. Pranay Sethi* (Supra). It is further submitted that the deceased was aged 28 years as per the post mortem report and the multiplier of 17 be applied to compute the compensation whereas the Claims Tribunal has assumed the age of the deceased as 35 years on the ground that in villages, the husband is 6-7 years older than the wife.

7. There is merit in the contention urged by learned counsels for both the

parties. In terms of the principles laid down in *National Insurance Co. Limited v. Pranay Sethi* (Supra), the compensation for loss of love and affection and for loss of guidance are not permissible heads and, therefore, compensation of Rs.6,00,000/- and Rs.4,00,000/- respectively awarded by the Claims Tribunal under these heads are set aside. The compensation for loss of consortium is reduced from Rs.1,00,000/- to Rs.40,000/-, compensation for loss of estate is reduced from Rs.1,00,000/- to Rs.15,000/- and compensation towards funeral expenses is reduced from Rs.25,000/- to Rs.15,000/- in terms of principles laid down in *National Insurance Co. Limited v. Pranay Sethi* (Supra).

8. The claimants are entitled to future prospects which have not been awarded by the Claims Tribunal. The future prospects of 40% awarded to the claimants in terms of principles laid down in *National Insurance Co. Limited v. Pranay Sethi* (Supra).

9. The Claims Tribunal assumed the age of the deceased as 35 years whereas the age of the deceased as per the post mortem report is 28 years. The presumption drawn by the Claims Tribunal appears to be faulty. The age of the deceased is taken as 28 years and the multiplier is enhanced from 16 to 17.

10. The deceased was working as tailor at the time of his death. It was claimed that the deceased was earning Rs.15,000/- which was not accepted. The Claims Tribunal took the minimum wages of Rs.5703.60 in Madhya Pradesh. The law is well settled that it is not mandatory to resort to minimum wages to compute the compensation in each and every case. Reference is made to *Municipal Corporation of Delhi v. Association of Victims of Uphar Tragedy* (supra), in which 59 persons died in 1997 and

the Supreme Court granted compensation of Rs.10,00,000/- to the victims above 20 years of age by taking their income as Rs.8,333/- per month whereas the minimum wages at the relevant time were less than Rs.2600/- per month. The relevant portion of the judgment is as under:

“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)

11. In ***Uphaar Tragedy*** (*supra*), the Supreme Court has awarded Rs.10 lakhs to the victims aged more than 20 years and Rs.7.5 lakhs to the victims aged less than 20 years. In that case, the multiplier of 15 was applied and $1/3^{\text{rd}}$ was deducted towards the personal expenses which mean that the Court has assumed the income of the victims aged more than 20 years to be Rs.8,333/- per month and that of victims aged less than 20 years to be Rs.6,249/- per month. The calculation of the compensation would be as under :-

For victims aged more than 20 years:-

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

For victims aged less than 20 years:-

$(\text{Rs.}6,249/- \text{ less } 1/3^{\text{rd}}) \times 15 = \text{Rs.}7.5 \text{ lakhs.}$

12. It is relevant to note that the ***Uphaar Tragedy*** (*supra*), 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.

13. Applying the principles laid down in *Uphaar tragedy* case, the income

of the deceased is presumed to be Rs.8,800/- per month. Taking the income of the deceased as Rs.8,800/- per month, adding 40% towards future prospects, deducting 1/5th towards the personal expenses and applying the multiplier of 17, the loss of dependency is computed as Rs.20,10,624/- rounded off. Adding Rs.40,000/- towards loss of consortium, Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses, the total compensation computed is Rs.20,80,624/-.

14. Both the appeals are allowed and the compensation amount is reduced from Rs.21,01,000/- to Rs.20,80,624/- along with interest at the rate of 9% per annum from the date of the filing the claim petition i.e. 23rd March, 2013.

15. The appellants has deposited Rs.15,00,000/- with the Registrar General of this Court in terms of order dated 05th December, 2017.

16. The appellant in MAC.APP. 1062/2017 is directed to deposit the balance award amount along with up to date interest with the Registrar General of this Court within four weeks.

17. Learned counsel for the respondents No.1, 6 and 7 submits that respondents No.1, 6 and 7 have no source of income and, therefore, respondents No.1, 6 and 7 are not assessed to Income Tax. Learned counsel for the respondents No.1, 6 and 7 further submits that respondents No.1, 6 and 7 will furnish the Form No.15G/Form No.15H so that no TDS is deducted by the insurance company.

18. Learned counsel for the respondents No.1, 6 and 7 in MAC.APP. 1062/2017 submits that the respondents No.1, 6 and 7 have savings bank accounts in State Bank of India, Saket Courts Branch. The respondents No.1, 6 and 7 are directed to transfer the savings bank accounts with State Bank of

India, Saket Courts Branch to a Branch of State Bank of India near the place of their residence. The concerned bank is directed not to issue any cheque book and/or debit card to the respondents No.1, 6 and 7 and if the same have already been issued, the concerned bank is directed to cancel the same and make an endorsement on the passbooks that no cheque book or debit card shall be issued to respondent No.1, 6 and 7 without the permission of this Court. However, the concerned bank shall permit respondents No.1, 6 and 7 to withdraw money from their savings bank accounts by means of a withdrawal form.

19. Respondents No.1, 6 and 7 shall produce the copy of this order before the concerned bank whereupon the bank shall make an endorsement on the passbooks. Respondents No.1, 6 and 7 shall produce the original passbook with the necessary endorsement on the next date of hearing.

20. The copy of this order be sent to State Bank of India, Saket Courts Branch for compliance.

21. List for disbursement of the compensation amount on 03rd May, 2019 at 02:30 PM.

22. Pending applications are disposed of.

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

J.R. MIDHA, J.

MARCH 20, 2019

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