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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% **Date of Decision: 06th February, 2020**

\+ MAC.APP. 177/2013

THE NEW INDIA ASSURANCE CO. LTD. ..... Appellant
Through: Mr.Pankaj Seth, Advocate

versus

SAROJ BALA & ORS. ..... Respondents
Through: Mr.Himanshu Jawa, Advocate

\+ MAC.APP. 466/2013

SAROJ BALA ..... Appellant
Through: Mr.Himanshu Jawa, Advocate

versus

GOVIND SINGH & ORS ..... Respondents
Through: Mr.Pankaj Seth, Advocate

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

J U D G M E N T (ORAL)

1. The parties have challenged the award of the Claims Tribunal whereby compensation of Rs.5,53,832/- has been awarded to the claimants.

2. The accident dated 20th April, 2006 resulted in the death of Sachin Bhardwaj. The deceased aged 15 years 6 months was studying in 10th standard at the time of the accident. The deceased was survived by his mother who claimed compensation.

3. The Claims Tribunal took the minimum wages of Rs.3,695/-, added 30% towards future prospects, deducted 50% towards personal expenses and applied the multiplier of 18 to compute the loss of dependency as Rs.5,18,832/-. The Claims Tribunal awarded Rs.25,000/- towards loss of love and affection and Rs.10,000/- towards funeral expenses. Total compensation awarded is Rs.5,53,832/-.

4. Learned counsel for the appellant in MAC.APP.177/2003 submits that the qualification, employment and income of the deceased have not been proved and the notional income of the deceased equivalent to the minimum wages has been taken without any basis. It is further submitted that the future prospects should not have been granted.

5. Learned counsel for the appellant in MAC. APP.466/2013 urged at the time of the hearing that Rs.7,50,000/- be awarded as compensation to the claimants in terms of principles laid down in ***Suman Devi v. Suresh Joshi***, MAC. APP.1100/2014, decided on 23rd December, 2016.

6. In ***Suman Devi*** (*supra*), this Court awarded compensation of Rs.7,50,000/- to a student of 9th standard aged 16 years by applying the principles laid down by the Supreme Court in ***Municipal Corporation of Delhi v. Association of Victims of Uphaar Tragedy***, AIR 2012 SC 100. Relevant portion of the said judgment is reproduced hereunder:

> *"5. In the case of* ***Municipal Corporation of Delhi v. Association of Victims of Uphaar Tragedy,*** *(supra), 59 persons died in Uphaar tragedy in 1997 and the Supreme Court granted compensation of Rs.7,50,000/- to the victims below 20 years of age by taking their income as Rs.6,249/- per month whereas the minimum wages at the relevant time were less than Rs.2600/-. The Supreme Court held as hereunder:-*
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> > *"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 tortuous 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."*
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> ***(Emphasis Supplied)"***

> *6. Applying the principles laid down by this Court in* ***Municipal Corporation of Delhi v. Association of Victims of Uphaar Tragedy*** *(supra), this Court is of the view that the appellants are entitled to compensation of Rs.7,50,000/-. The Claims Tribunal has awarded interest @ 12% per annum which is on higher side and which is reduced to @ 9% per annum from the date of filing of the petition till realization.*
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> *7. The appeal is allowed and the award amount is enhanced from Rs.3,75,000/- to Rs. 7,50,000/- along with interest @ 9% per annum from date of petition till realisation."*

7. Following the principles laid down by this Court in the aforesaid judgments, MAC.APP.466/2013 is allowed and the compensation of Rs.7,50,000/- is awarded to the appellant in MAC.APP.466/2013 along with interest @ 9% per annum from the date of institution till realization. MAC.APP.177/2013 is dismissed.

8. The enhanced award amount be deposited by the appellant in MAC.APP.177/2013 with the Registrar General of this Court within four weeks.

9. The insurance company has deposited the amount awarded by the Claims Tribunal with UCO Bank, Delhi High Court Branch in terms of order dated 22nd February, 2013 out of which 60% amount has been released to the claimants and the balance amount is lying in fixed deposit.

10. List for disbursement of the amount on 20th March, 2020.

11. The claimant, Saroj Bala shall remain present in Court on the next date of hearing along with the passbook of her savings bank account near the place of her residence as well as PAN card and Aadhaar card. The concerned bank of claimant is directed not to issue any cheque book or debit card to claimant and if the same have already been issued, the bank is directed to cancel the same and make an endorsement on her passbook to this effect. The claimant shall produce the copy of this order to the concerned bank, whereupon the bank shall make an endorsement on the passbook of claimant that no cheque book and/or debit card shall be issued to the claimant without the permission of this Court. However, the concerned bank shall permit claimant to withdraw money from her savings bank account by means of a withdrawal form. The claimant shall produce the original passbooks of her individual savings bank account with the necessary endorsement on the next date of hearing.

12. The statutory amount be refunded back to the appellant in MAC.APP.177/2013 within four weeks.

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

J.R. MIDHA, J.

FEBRUARY 06, 2020/dk