

IN THE HIGH COURT OF DELHI AT NEW DELHI

MAC.APP.No.475/2008

Date of Decision: 11th January, 2010

NATIONAL INSURANCE CO. LTD Appellant
Through : Mr. Amit Kumar Pandey, Adv.

versus

SHAKUNTALA & ORS Respondents
Through : Mr. Piyush Prabhakar, Adv.
for R-1 to 5.

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

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| 1. | Whether Reporters of Local papers may be allowed to see the Judgment? | YES |
| 2. | To be referred to the Reporter or not? | YES |
| 3. | Whether the judgment should be reported in the Digest? | YES |

JUDGMENT (Oral)

1. The appellant has challenged the award of the learned Tribunal whereby compensation of Rs.9,50,000/- has been awarded to claimants/respondents No.1 to 5. The appellants seek reduction of the award amount.

2. The accident dated 6th October, 2001 resulted in the death of Uma Shankar. The deceased was survived by his widow, one son and three daughters who filed the claim petition before the learned Tribunal.

3. The deceased was aged 32 years at the time of the accident and was working as a driver with M/s Bansal Building Material

added 50% towards future prospects, deducted 1/3rd towards the personal expenses of the deceased and applied the multiplier of 17 to compute the loss of dependency at Rs.9,18,000/-. Rs.32,000/- has been awarded towards loss of love and affection, consortium and funeral expenses. The total compensation awarded is Rs.9,50,000/-.

4. The only ground urged by learned counsel for the appellant at the time of hearing of this appeal is that the income of the deceased has not been sufficiently proved and, therefore, the minimum wages should be taken into consideration for computing the compensation.

5. The widow of the deceased appeared in the witness box as PW-1 and deposed that her husband was working with M/s Bansal Building Material Suppliers earning Rs.4,500/- per month besides other benefits and facilities. The colleague of the deceased appeared in the witness box as PW-3 and deposed that the deceased was working with M/s Bansal Building Material Suppliers drawing a salary of Rs.4,500/- per month besides benefits/facilities such as overtime. The employer of the deceased also appeared in the witness box as PW-4 and deposed that he was paying Rs.4,500/- per month as salary to the deceased apart from overtime of Rs.800/- to Rs.1,000/- per month.

6. The learned counsel for the appellant submits that PW-4, in cross-examination, admitted that he was not maintaining any

wager and wages were paid in cash. The learned counsel for the appellant submits that the admission of PW-4 that the deceased was a daily wager means that the deceased was being paid the salary according to the Minimum Wages Act. The interpretation of the statement of PW-4 by learned counsel for the appellant is not correct. PW-4 has clearly stated in his testimony that he was paying Rs.4,500/- per month as salary to the deceased. Even if the salary was calculated according to the daily wages, it can be more than the minimum wages fixed under the Act and no question was put to the witness by the appellant that the wages of the deceased were less than Rs.4,500/- per month. From the statement of PW-1, PW-3 and PW-4, it has been sufficiently proved that the deceased was earning Rs.4,500/- per month. It may also be noted that the proceedings under Sections 168 and 169 of the Motor Vehicles Act are in the nature of summary inquiry and the proof on record is sufficient to prove the income of the deceased.

7. The learned counsel for the appellant further submits that the multiplier be reduced from 17 to 16 in view of the judgment of the Hon'ble Supreme Court in the case of **Sarla Verma Vs. Delhi Transport Corporation, 2009 (6) Scale 129**. In the case **Sarla Verma (supra)**, the Hon'ble Supreme Court has laid down the following principles for computation of compensation:-

I. MULTIPLIER

Age of the deceased
(in years)

Multiplier

26 - 30	17
31 - 35	16
36 - 40	15
41 - 45	14
46 - 50	13
51 - 55	11
56 - 60	09
61 - 65	07
Above 65	05

II. DEDUCTION FOR PERSONAL AND LIVING EXPENSES

Deceased - unmarried

- (i) Deduction towards personal expenses. : 1/2 (50%)
- (ii) Deduction where the family of the bachelor is large and dependent on the income of the deceased. : 1/3rd (33.33%)

Deceased - married

- (i) 2 to 3 dependent family members. : 1/3rd
- (ii) 4 to 6 dependent family members. : 1/4th
- (iii) More than 6 family members : 1/5th
- (iv) Subject to the evidence to the contrary. : Father, brother and sisters will not be considered as dependents.

III. FUTURE PROSPECTS

- (i) Permanent job below 40 years of age : Actual salary - tax + 50% towards future prospects.
- (ii) Permanent job between 40 - 50 years : Actual salary - tax +30% towards future prospects.
- (ii) More than 50 years with permanent job. : Actual salary only. No addition for future prospects.
- (iv) Deceased employed at a fixed salary (without provision for annual increments) : Only actual income to be taken. No addition.
- (v) Departure from this Rule : Only in rare and exceptional cases involving special circumstances.

IV. NON-PECUNIARY DAMAGES

- (i) Compensation for loss of estate : Rs.5,000/- to Rs.10,000/-

- (iii) Compensation for pain and sufferings and hardship : Nil
- (iv) Funeral expenses, cost of transportation of body and medical expenses” : Actual

8. Following the aforesaid judgment, the deduction is liable to be reduced from $1/3^{\text{rd}}$ to $1/4^{\text{th}}$ and multiplier is liable to be reduced from 17 to 16. The loss of dependency is liable to be enhanced from Rs.9,18,000/- to Rs.9,72,000/- [(Rs.4,500 + 50% of Rs.4,500) x $\frac{3}{4}$ x 12 x 16). However, since there are no cross-objections by the claimants, the enhancement is not warranted in this matter.

9. For all the aforesaid reasons, the appeal is dismissed.

10. The appellant has deposited the entire award amount along with interest with the Registrar General of this Court in terms of the order dated 5th February, 2009. The Registrar General is directed to remit/transfer the entire award amount along with interest to UCO Bank, Delhi High Court Branch A/c Shakuntala within three weeks.

11. Upon the receipt of the aforesaid award amount by UCO Bank, UCO Bank is directed to keep as sum of Rs.12,00,000/- in fixed deposit in the following manner:-

- (i) Fixed deposit of Rs.2,00,000/- in the name of respondent No 3 till she attains the age of 20 years

respondent No.4 till she attains the age of 20 years.

- (iii) Fixed deposit of Rs.2,00,000/- in the name of respondent No.5 till she attains the age of 20 years.
- (iv) Fixed deposit of Rs.50,000/- in the name of respondent No.2 for a period of one year.
- (v) Fixed deposit of Rs.50,000/- in the name of respondent No.2 for a period of 1- ½ years.
- (vi) Fixed deposit of Rs.50,000/- in the name of respondent No.2 for a period of two years.
- (vii) Fixed deposit of Rs.50,000/- in the name of respondent No.2 for a period of 2- ½ years.
- (viii) Fixed deposit of Rs.50,000/- in the name of respondent No.1 for a period of three years.
- (ix) Fixed deposit of Rs.50,000/- in the name of respondent No.1 for a period of 3- ½ years.
- (x) Fixed deposit of Rs.50,000/- in the name of respondent No.1 for a period of four years.
- (xi) Fixed deposit of Rs.50,000/- in the name of respondent No.1 for a period of 4- ½ years.
- (xii) Fixed deposit of Rs.50,000/- in the name of respondent No.1 for a period of five years.
- (xiii) Fixed deposit of Rs.50,000/- in the name of respondent No.1 for a period of 5- ½ years.
- (xiv) Fixed deposit of Rs.50,000/- in the name of respondent

(xv) Fixed deposit of Rs.50,000/- in the name of respondent No.1 for a period of 6- ½ years.

12. The remaining amount be released equally to respondents No.1 and 2 by transferring the same in their respective Saving Bank Accounts.

13. The interest on all the aforesaid fixed deposits shall be paid monthly by automatic credit of interest in the Savings Account of respondent No.1.

14. Withdrawal from the aforesaid accounts shall be permitted to respondent No.1 after due verification and the Bank shall issue photo Identity Card to respondent No.1 to facilitate identity.

15. No cheque book be issued to respondent No.1 without the permission of this Court.

16. The original Fixed Deposit Receipts shall be retained by the Bank in the safe custody. However, the original Pass Book shall be given to respondents No.1 to 5 along with the photocopy of the FDRs.

17. The original Fixed Deposit Receipts shall be handed over to respondents No.1 to 5 on the expiry of the period of the FDRs.

18. No loan, advance or withdrawal shall be allowed on the said fixed deposit receipts without the permission of this Court.

19. Half yearly statement of account be filed by the Bank in this Court.

20. On the request of respondents No.1 to 5, the Bank shall transfer the Savings Account to any other branch of UCO Bank according to the convenience of respondents No.1 to 5.

21. Respondents No.1 to 5 shall furnish all the relevant documents for opening of the Saving Bank Account and Fixed Deposit Account to Mr. M.M. Tandon, Member-Retail Team, UCO Bank Zonal, Parliament Street, New Delhi.

22. The statutory amount of Rs.25,000/- be refunded back to the appellant through counsel within four weeks.

23. Copy of the order be given dasti to counsel for both the parties under the signatures of the Court Master.

24. Copy of this order be also sent to Mr. M.M. Tandon, Member-Retail Team, UCO Bank Zonal, Parliament Street, New Delhi (Mobile No. 09310356400) through the UCO Bank, High Court Branch under the signature of Court Master.

J.R. MIDHA, J

JANUARY 11, 2010