

IN THE HIGH COURT OF DELHI AT NEW DELHI

FAO 365/1999

Date of decision : 26th March, 2010

SAT PRAKASH & ORS Appellant
Through : Mr. O.P. Mannie, Adv.

versus

JAGDISH & ORS Respondents
Through : Mr. Pankaj Seth, Adv.

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

- | | | |
|----|---|-----|
| 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

1. The appellants have challenged the award of the learned Tribunal whereby compensation of Rs.1,17,600/- has been awarded to the appellants. The appellants seek enhancement of the award amount.

2. The accident dated 25th February, 1990 resulted in the death of Bal Kishan. The deceased was survived by two sons, one daughter, legal representatives of pre-deceased daughter and mother who filed the claim petition before the learned Tribunal.

Claims Tribunal took the income of the deceased as Rs.881/- per month according to the minimum wages and Rs.1,200/- per month from his agriculture work. The total income of the deceased was taken at Rs.2,080/- per month. $\frac{1}{3}^{\text{rd}}$ was deducted towards his personal expenses and the multiplier of 7 was applied to compute the loss of dependency at Rs.1,17,600/-.

4. The learned counsel for the appellants has urged the following grounds at the time of hearing of this appeal:-

- (i) The increase in minimum wages due to inflation and rise in price index be taken into consideration.
- (ii) The personal expenses of the deceased be reduced from $\frac{1}{3}^{\text{rd}}$ to $\frac{1}{4}$.
- (iii) The multiplier be enhanced from 7 to 13.
- (iv) The compensation be awarded for loss of love and affection, loss of estate and funeral expenses.

5. The increase in minimum wages due to inflation and rise in price index is not warranted in the present case because the Claims Tribunal has taken the minimum wages of Rs.881/- per month and has added Rs.1,200/- per month towards income from agriculture work.

6. According to the judgment of the Hon'ble Supreme Court in the case of **Sarla Verma Vs. Delhi Transport Corporation, 2009**

representatives.

7. Following the aforesaid judgment of the Hon'ble Supreme Court, the multiplier is enhanced from 7 to 13 and the deduction towards personal expenses is reduced from 1/3rd to 1/4th. Rs.10,000/- is awarded towards loss of love and affection, Rs.5,000/- towards loss of estate and Rs.5,000/- towards funeral expenses.

8. Taking the income of the deceased as Rs.2,080/- per month, deducting 1/4th towards his personal expenses, applying the multiplier of 13, adding Rs.10,000/- towards loss of love and affection, Rs.5,000/- towards loss of estate and Rs.5,000/- towards funeral expenses, the total compensation is computed to be Rs.2,63,360/- [(Rs.2,080 x 12 x 3/4 x 13) + Rs.10,000 + Rs.5,000 + Rs.5,000]

9. The appeal is allowed with costs. The award amount is enhanced from Rs.1,17,600/- to Rs.2,63,360/-. The learned Tribunal has awarded interest @12% per annum which is not disturbed on the original award amount of Rs.1,17,600/-. However, on the enhanced award amount, the rate of interest shall be @7.5% per annum from the date of filing of the petition till realization. The cost of the appeal is assessed at Rs.16,500/- based on the memo of fees filed by the counsel for the appellant at the time of hearing of this appeal. The shares of the appellants in the award amount shall be as under:-

10. The learned counsel for the appellant and other counsels present in the Court point out that the Claims Tribunals do not award the cost of litigation in any matter as a result of which the claimants have to bear the legal cost out of the award amount. The learned counsels point out that the cost of litigation should be separately awarded to the claimants to be paid by the Insurance Companies. The learned counsels further point out that after the disposal of the case by the Claims Tribunals, the Insurance Companies do not gracefully pay the legal fees even to their own counsels for various considerations which are not being put on record and the counsels suffer harassment/embarrassment in following up the legal fees after the disposal of the cases. It is submitted that the counsels appearing in the Court are officers of the Court and the agreed fees should be paid gracefully by all the parties.

11. Considering that the lawyers are the officers of the Court and they are entitled to their legal fees with dignity and so far as the claimants are concerned, they are entitled to the reasonable cost of litigation, it is desirable that wherever the lawyer - client agreement is filed before or at the time of final hearing of the case, the cost equivalent to the reasonable fee may be awarded and the Insurance Companies be directed to deposit the said cost by means of a separate cheque in the name of the claimant's

means of a separate cheque drawn in the name of their counsel with the Bank simultaneously along with the award amount to be released by the Bank to the Insurance Company's counsel.

12. The enhanced award amount along with interest be deposited by respondent No.3 with UCO Bank A/c Sat Parkash, Delhi High Court Branch through Mr. M.M. Tandon, Member-Retail Team, UCO Bank Zonal, Parliament Street, New Delhi (Mobile No. 09310356400) within 30 days. The cost of Rs.16,500/- of this appeal be deposited by respondent No.3 by means of separate cheque in the name of O.P. Mannie, Advocate along with the deposit of the enhanced award amount. The legal fee of the counsel for respondent No.3 be also deposited with UCO Bank by means of a separate cheque in the name of Mr. Pankaj Seth, Advocate.

13. Upon the aforesaid deposit being made, the UCO Bank is directed to release 50% of the share amount to the appellants by transferring the same to their respective Saving Bank Account and the remaining amount be kept in fixed deposit for a period of one year with cumulative interest. The cheque towards the cost and legal fees be released by UCO Bank to the respective counsels for the appellants and respondent No.3.

14. The original Fixed Deposit Receipts shall be retained by the Bank in the safe custody. However, the original Pass Book shall be given to the respective appellants along with the photocopy of the

15. On the expiry of the period of the FDRs, the maturity amount be paid to the appellants by transferring the same to the Saving Bank Account of respective appellants.

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

17. On the request of the appellants, the Bank shall transfer the Savings Account to any other branch of UCO Bank according to the convenience of the appellants.

18. The appellants 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.

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

20. The copy of this order be sent to all the Claims Tribunal and Additional District Judges dealing with MACT cases through Registrar (Appellate) of this Court.

21. 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

MARCH 26, 2010

mk