
(2012) 04 DEL CK 0060

In the Delhi High Court

Case No : Mac. App. No. 614 of 2007

National Insurance Co. Ltd.

APPELLANT

Vs

Chander Dutt and Others

RESPONDENT

Date of Decision : 27-04-2012

Acts Referred:

Citation : (2012) 04 DEL CK 0060

Hon'ble Judges : J.R. Midha, J

Bench : Single Bench

Advocate : Pradeep Gaur, Mr. Amit Gaur, Ms. Mansi and Mr. Shashank Sharma, for the Appellant; Manjeet Chawla and Ms. Sunanda Roy, for the Respondent

Final Decision : Dismissed

Judgement

1. The appellant has challenged the award of the learned Tribunal whereby the compensation of Rs. 11,88,400/- has been awarded to respondent No.1. The appellant seeks reduction of the award amount. The accident dated 25th September, 2003 resulted in 80% permanent disability and amputation of left lower limb to respondent No.1. The Claims Tribunal took the loss of earning capacity of respondent No.1 to be 80% and awarded Rs. 8,42,400/- towards loss of income due to permanent disability. Following the judgment of this Court in the case of Oriental Insurance Company Ltd. v. V.S. Vijay Kumar Mittal, 2008 ACJ 1300, the Claims Tribunal awarded Rs. 1,00,000/- towards pain and suffering, Rs. 1,00,000/- towards physical disfigurement/mental agony, Rs. 50,000/- towards loss of enjoyment and amenity, Rs. 50,000/- towards marriage prospects. The Claims Tribunal awarded Rs. 11,000/- towards expenditure on medicines/ambulance, Rs. 10,000/- towards special diet, Rs. 10,000/- towards conveyance and Rs. 15,000/- towards attendant charges. The total compensation awarded is Rs. 11,88,400/- along with interest @ 7% per annum

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

(i) The increase in minimum wages due to inflation and rise in price index should not be taken into consideration.

(ii) The loss of earning capacity of 80% is liable to be reduced.

(iii) The Claims Tribunal has not deducted 1/3rd towards the personal expenses of the deceased while computing the loss of income due to permanent disability.

3. The learned counsel for respondent No.1 submits as under:-

(i) The Claims Tribunal ought to have taken the earning capacity of respondent No.1 into consideration instead of applying the minimum wages. Respondent No.1 had passed the Senior Secondary School Examination and was pursuing graduation as well as computer classes. Simultaneously respondent No.1 was doing the work of marketing and was earning Rs. 3,000/- per month. The secondary school certificates, mark sheets, character certificate, provisional certificate, Delhi University certificate and admission ticket for the graduation course were proved as Ex.PW1/38 to Ex.PW1/45.

(ii) The deduction towards the personal expenses is not permissible in injury cases.

(iii) The compensation awarded towards the conveyance be enhanced.

4. In *Association of Victims of Uphaar Tragedy v. UOI* 104 (2003) DLT 234 (DB), the Division Bench of this Court applied the multiplier method and the Second Schedule of the Motor Vehicles Act, 1988 to compute the compensation payable to the victims of the Uphaar Tragedy. The Division Bench held that the victims of the fire incident belonged to reasonably well-placed families and presumed the average income of the victims above age of 20 years to be not less than Rs. 15,000/- per month, 1/3rd was deducted towards the personal expenses and the multiplier of 15 was applied to compute the compensation as Rs. 18,00,000/-. With respect to the children, the Division Bench awarded compensation of Rs. 15,00,000/-. The Division Bench also awarded interest @ 9% per annum. The findings of the Division Bench of this Court are reproduced hereunder:-

109. The Supreme Court in *G.M. Kerala State Road Transport Corporation Trivandrum v. Susamma Thomas (Mrs) and Ors.* (supra), has held that the multiplier method of compensation was the logically sound and well established method for determining the compensation. It was held that a departure might be justified only in rare and extra ordinary circumstances and very exceptional cases. It has also been held by the Supreme Court in *Sarla Dixit v. Balwant Yadav*, etc. that unless there were special reasons, the Court should not deviate from the schedule of the Motor Vehicles Act in arriving at just compensation payable to the victims of the road accident. The principles laid down in the said judgment can also be applied in the present case. Though the actual income of none of the deceased is on record but having regard to the fact that all those persons who had either died or were injured were sitting in the balcony where the rate of admission was Rs.50/- per seat, it can safely be concluded that the

victims of the fire incident belong to reasonably well placed families and this Court will, therefore, not be in error in holding that the average income of each one of the victims above the age of 20 years was not less than Rs.15,000/- per month. Deducting 1/3rd for the personal expenses of the deceased, the dependency would not be less than Rs.10,000/- per month or say Rs.1,20,000/- per annum. Applying the multiplier 15 prescribed in the second schedule to the Motor Vehicles Act, in our view, relatives of each one of the victims would be entitled to compensation of Rs.18,00,000/- (Rupees Eighteen Lacs only). Insofar as the children mentioned in Annexure-B are concerned, in our view, the relatives of each one of the said child would be entitled to a lumpsum compensation of Rs.15,00,000/- (Rupees Fifteen Lacs only). We also direct that the relatives of the deceased as well as the persons injured in fire will also be entitled to interest at the rate of 9% per annum from the date of filing of the petition on the amount of compensation assessed by us. The respondents, above-named, are granted two months time to pay compensation with interest and till such time the compensation is paid, respondents 11 and 12 will have no right to transfer, assign or create third party rights in the cinema building. In case of non-payment of compensation within the period fixed by us, the amount can be recovered by execution as a decree by sale of the cinema building or in any other manner in accordance with law.

110. We have arrived at the compensation on the basis of our estimation of the income of the victims of the unfortunate incident as we had no means to know their exact income. We, therefore, leave it open to the injured as well as relatives of the deceased to claim compensation based on the exact income of the victims by filing a suit or any other proceeding as may be permissible in law and if a suit or any other proceedings claiming such compensation are initiated within one year of this judgment, the same shall not be dismissed only on the ground of limitation. The amount directed by us to be payable under this judgment shall be adjusted against the amount which may ultimately be granted in favor of such persons in the proceedings mentioned above.

(Emphasis Supplied)

5. The Municipal Corporation of Delhi challenged the aforesaid judgment of the Division Bench before the Supreme Court. The Supreme Court in Municipal Corporation of Delhi, Delhi Vs. Association of Victims of Uphaar Tragedy and Others, reduced the compensation from Rs. 18 lakhs to Rs. 10 lakhs in respect of victims aged more than 20 years and from Rs. 15 lakhs to Rs. 7.5 lakhs in respect of the victims aged less than 20 years. The findings of the Supreme Court are reproduced hereunder :-

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 Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others, 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.

39. Normally we would have let the matter rest there. But having regard to the special facts and circumstances of the case we propose to proceed a step further to do complete justice. The calamity resulted in the death of 59 persons and injury to 103 persons. The matter related to a ghastly fire incident of 1997. The victims association has been fighting the cause of victims for more than 14 years. If at this stage, we require the victims to individually approach the civil court and claim compensation, it will cause hardship, apart from involving huge delay, as the matter will be fought in a hierarchy of courts. The incident is not disputed. The names and identity of the 59 persons who died and 103 persons who were injured are available and is not disputed. Insofar as death cases are concerned the principle of determining compensation is streamlined by several decisions of this Court. (See for example Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, . If three factors are available the compensation can be determined. The first is the age of the deceased, the second is the income of the deceased and the third is number of dependants (to determine the percentage of deduction for personal expenses). For convenience

the third factor can also be excluded by adopting a standard deduction of one-third towards personal expenses. Therefore, just two factors are required to be ascertained to determine the compensation in 59 individual cases. First is the annual income of the deceased, two-third of which becomes the annual loss of dependency the age of the deceased which will furnish the multiplier in terms of Sarla Verma. The annual loss of dependency multiplied by the multiplier will give the compensation.

Conclusions

46. In view of the foregoing, we dispose of the appeals as follows:

xxx

(v) CA No. 6748 of 2004 is allowed in part and the judgment of the High Court is modified as under:

(a) The compensation awarded by the High Court in the case of death is reduced from Rs. 18 lacs to Rs. 10 lacs (in the case of those aged more than 20 years) and Rs. 15 lacs to Rs. 7.5 lacs (in the case of those aged 20 years and less). The said sum is payable to legal representatives of the deceased to be determined by a brief and summary enquiry by the Registrar General (or nominee of learned Chief Justice/Acting Chief Justice of the Delhi High Court).

(b) The compensation of Rs. One lakh awarded by the High Court in the case of each of the 103 injured persons is affirmed.

(c) The interest awarded from the date of the writ petition on the aforesaid sums at the rate of 9% per annum is affirmed.

(d) If the legal representatives of any deceased victim are not satisfied with the compensation awarded, they are permitted to file an application for compensation with supporting documentary proof (to show the age and the income), before the Registrar General, Delhi High Court. If such an application is filed within three months, it shall not be rejected on the ground of delay. The Registrar General or such other Member of Higher Judiciary nominated by the learned Chief Justice/Acting Chief Justice of the High Court shall decide those applications in accordance with paras above and place the matter before the Division Bench of the Delhi High Court for consequential formal orders determining the final compensation payable to them.

(Emphasis Supplied)

6. In *MCD v. Association of Victims of 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 1/3rd was deducted towards the personal expenses which means 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:-

(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 15 = Rs. 7.5 lakhs.

7. It is relevant to note that the Uphaar Tragedy took place on 13th June, 1997 and the minimum wages at the relevant time ranged from Rs. 1677/- for unskilled workers to Rs. 2437/- for graduates. It is thus clear that although there was no proof of the income of the victims, the Supreme Court did not find it proper to apply the minimum wages.

8. With respect to the loss of earning capacity, the Claims Tribunal has taken into consideration the minimum wages of Rs. 3,250/-, added 50% towards the inflation and applied the multiplier of 18 and taken 80% thereof to compute the loss of income due to the permanent disability as Rs. 8,42,400/-. The appellant was 23 years at the time of the accident. He was doing a job of marketing earning Rs. 3,000/- per month. He had already passed his senior secondary school examination and was pursuing the graduation through correspondence as well as computer classes. The secondary school certificates as well as the documents relating to the graduation course by the appellant have been duly proved as Ex.PW1/38 to Ex.PW1/45. In that view of the matter the Claims Tribunal was not justified in applying the minimum wages. The Claims Tribunal ought to have presumed the income of the appellant in terms of the principles laid down by the Supreme Court in *Municipal Corporation of Delhi v. Association of Victims of Uphaar Tragedy & Ors.* (supra). Following the aforesaid judgment, this Court presumes the income of the appellant as Rs. 4,875/- per month on the basis of the material placed on record to compute the loss of income due to permanent disability. No deduction is permissible towards personal expenses in injury cases. The claimant has suffered 80% permanent disability due to amputation of left lower limb and he has deposed on oath before the Claims Tribunal that he is unable to do any work. In that view of the matter, the finding of the Claims Tribunal with respect to the loss of earning capacity to be 80% and computation of Rs. 8,42,400/- towards loss of earning capacity is upheld.

9. The Claims Tribunal has awarded Rs. 10,000/- towards the conveyance charges which are inappropriate considering 80% permanent disability suffered by respondent No.1 as he would have to incur recurring expenditure on conveyance for the rest of his life. However, considering that the sufficient compensation has been awarded to respondent No.1 and substantial amount has been directed to be invested in fixed deposit, the interest on fixed deposit should be sufficient for respondent No.1 to bear the expenditure on conveyance.

10. For the reasons as aforesaid, the appeal is dismissed.

11. The appellant has deposited Rs. 9,00,000/- with the Claims Tribunal and remaining award amount with the Registrar General of this Court in terms of the orders dated 29th November, 2007 and 30th April, 2009. The order for disbursement of the award amount by the Claims Tribunal is not in terms of the judgment of the Supreme Court in Jai Prakash Vs. National Insurance Co. Ltd. and Others, In that view of the matter, the order of disbursement of the award amount to respondent No.1 is modified. The Claims Tribunal is directed to instruct the Bank to transfer the entire amount in fixed deposit to UCO Bank by means of a cheque drawn in the name of UCO Bank A/c Chander Dutt. The Registrar General is directed to discharge all the fixed deposits and transfer the amount to UCO Bank. UCO Bank is directed to release the 10% of the total amount in the savings account of respondent No.1. With respect to the remaining amount, UCO Bank is directed to keep the same in fixed deposit in the following manner:-

- (i) Fixed deposit in respect of 10% for a period of one year.
- (ii) Fixed deposit in respect of 10% for a period of two years.
- (iii) Fixed deposit in respect of 10% for a period of three years.
- (iv) Fixed deposit in respect of 10% for a period of four years.
- (v) Fixed deposit in respect of 10% for a period of five years.
- (vi) Fixed deposit in respect of 10% for a period of six years.
- (vii) Fixed deposit in respect of 10% for a period of seven years.
- (viii) Fixed deposit in respect of 10% for a period of eight years.
- (ix) Fixed deposit in respect of 10% for a period of nine years.

12. The interest on the aforesaid fixed deposits shall be paid monthly by automatic credit of interest in the respective Savings Account of the beneficiary.

13. Withdrawal from the aforesaid account shall be permitted to the beneficiary after due verification and the Bank shall issue photo Identity Card to the beneficiary to facilitate identity.

14. No cheque book be issued to the beneficiary without the permission of this Court.

15. 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 beneficiary along with the photocopy of the FDRs. Upon the expiry of the period of each FDR, the Bank shall automatically credit the maturity amount in the Savings Account of the beneficiary.

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

17. Half yearly statement of account be filed by the Bank in this Court.
18. On the request of the beneficiary, Bank shall transfer the Savings Account to any other branch according to their convenience.
19. The beneficiary shall furnish all the relevant documents for opening of the Saving Bank Account and Fixed Deposit Account to Mr. M.S. Rao, AGM, UCO Bank, Delhi High Court Branch, New Delhi (Mobile No. 09871129345). Copy of this judgment be sent to Mr. M.S. Rao, AGM, UCO Bank, Delhi High Court Branch, New Delhi (Mobile No.09871129345).