(2017) 01 DEL CK 0151

In the Delhi High Court

Case No : MAC.APP. 445 of 2015

New India Assurance Co Ltd — APPELLANT

Vs

Master Sorab Dhama — RESPONDENT

Date of Decision : 17-01-2017

Acts Referred:
Motor Vehicles Act, 1988 — Section 166, Section 168, Section 173

Citation : (2017) 1 ACC 599 : (2017) 2 TAC 92

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

Bench : Single Bench

Advocate : Mr. Mridul Jain, Advocate, for the Appellant in MAC.APP. 445 of 2015; Mr. Peeush Sharma and Mr. Kartikey Nayyar, Advocates, for the Respondents No. 1 to 3 in MAC.APP. 445 of 2015; Mr. Peeush Sharma and Mr. Kartikey Nayyar, Advocates, for the Appellant in MAC.APP. 727/2015; Mr. Mridul Jain, Advocate, for the Respondents in MAC.APP. 727/2015

Final Decision : Allowed

Judgement

J.R Midha, J.(Oral)—The parties have challenged the award of the Claims Tribunal whereby compensation of Rs. 12,47,832/- has been awarded to the legal heirs of deceased, Dharmender Dhama.

2. The appellant in MAC.APP.445/2015 is seeking reduction of award amount whereas the appellant in MAC.APP.727/2015 is seeking enhancement of award amount.

3. The accident dated 4th October, 2012 resulted in the death of Dharmender Dhama. The deceased was aged 36 years at the time of accident and was survived by his widow, mother and three minor children. The deceased was working as a security guard at the time of the accident. It was claimed that the deceased was earning Rs. 12,000/- per month. The Claims Tribunal took minimum wages as Rs. 179.89 per day in respect of an unskilled worker in Utter Pradesh, added 50% future prospects, deducted ?th towards the personal expenses and applied the multiplier of 15 to compute the loss of dependency as

Rs. 10,92,832/-. The Claim Tribunal awarded Rs. 1,00,000/- towards loss of love and affection, Rs. 10,000/- towards loss of estate, Rs. 25,000/- towards funeral expenses and Rs. 20,000/- towards cost of litigation. The total compensation awarded by the Claims Tribunal is Rs. 12,47,832/-.

4. Learned counsel for the appellant in MAC APP.445/2015 urged at the time of hearing that the future prospects taken by the Claims Tribunal be set aside for computing the loss of dependency. It is further submitted that the litigation cost of Rs. 20,000/- be set aside.

5. The learned counsel for the appellant in MAC APP.727/2015 urged at the time of the hearing that the salary of Rs. 12,000/- be taken into consideration as the deceased was working as security guard in Vimhans Hospital, Delhi. It is further submitted that the widow of the deceased expired after the accident on 8th April, 2013 and the compensation under the head of loss of consortium be awarded.

6. The claimants, Sorab Dhama (son) aged 19 years, Baby Soni (minor daughter) aged 16 years and Master Vansu Dhama (minor son) aged 9 years are present in Court along with their counsel and they submit that their mother, Inderesh Devi expired on 8th April, 2013 whereas their grandmother, Rangbera Devi expired during the pendency of the appeal on 06th February, 2016. All the three children are presently staying with their guardian/grandfather, Sh. Rattan Singh. Claimant, Sorab Dhama is studying in 12th standard, Baby Soni studying in 9th standard whereas Master Vansu is studying in 1st standard.

7. The occupation of the deceased has been proved by PW1, who deposed that the deceased was working as a security guard. This Court is of the view that income of the deceased can be safely presumed to be Rs. 10,000/- per month. The law is well settled in this regard. It is not always necessary to resort to minimum wages to assume the income of the deceased. Reference be made to Municipal Corporation of Delhi v. Association of Victims of Uphaar Tragedy, AIR 2012 SC 100 in which 59 persons died in Uphaar tragedy 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/-. 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 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 then 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)"

8. It is relevant to note that the Uphaar tragedy 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. This Court is of the view that it is fair and reasonable to assume the income of the deceased who was working as a security guard as Rs. 10,000/- per month.

9. Taking the income of deceased as Rs. 10,000/- per month, deducting ?th towards his personal expenses and applying the multiplier of 15, the loss of dependency of the claimants is computed as Rs. 13,50,000/-. The widow of the deceased was alive on the date of the accident. In that view of the matter, the claimants are entitled to the loss of consortium. Rs. 1,00,000/- is awarded under the head of loss of consortium. The compensation of Rs. 10,000/- under the head of loss of estate, Rs. 1,00,000/- towards loss of love and affection and Rs. 25,000/- towards funeral expenses awarded by the Claims Tribunal is just, fair and reasonable. The Claimants are entitled to total compensation of Rs. 15,85,000/- (Rs. 13,50,000/- towards loss of dependency + Rs. 1,00,000/- towards loss of consortium + Rs. 1,00,000/- towards loss of love and affection + Rs. 25,000/- towards funeral expenses + Rs. 10,000/- towards loss of estate). The rate of interest @ 9% is upheld. However, penal rate of interest of 12% as well as litigation cost awarded by the Claims Tribunal is set aside.

10. Both the appeals are partially allowed and the compensation awarded by the Claims Tribunal is enhanced from Rs. 12,47,823/- to Rs. 15,85,000/- along with the interest rate of 9% per annum from the date of filing of the claim petition i.e. 8th October, 2013 till realisation.

11. The enhanced award amount be deposited by New India Assurance Co. Ltd. with UCO Bank, Delhi High Court Branch by means of a cheque drawn in the name of UCO Bank A/c Sorab Dhama within a period of four weeks from today. New India Assurance Co. Ltd. shall file the computation of interest of enhanced award amount on affidavit within one week of the deposit. The order of disbursement of award amount shall be passed after the deposit of the enhanced amount.

12. New India Assurance Co. Ltd. has already deposited the amount awarded by the Claims Tribunal with UCO Bank, Delhi High Court Branch in terms of order dated 25th May, 2015 out of which Rs. 1,00,000/- was released on 25th May, 2015. The order with respect to the disbursement of the balance amount was passed on 20th October, 2016. The learned counsel for the claimants submits that the disbursement has not yet been done by the UCO Bank as the claimants have not approached the Bank to complete the necessary formalities.

13. This Court has examined the claimants today and considering their requirements, the order dated 20th October, 2016 with respect to the disbursement of the amount is recalled. UCO Bank is directed to disburse the amount in the following manner:-

(i) UCO Bank, Delhi High Court Branch shall keep Rs. 4,00,000/- in 50 FDRs of Rs. 8,000/- each in the name of Sorab Dhama for the periods 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49 and 50 months respectively with cumulative interest.

(ii) UCO Bank, Delhi High Court Branch shall keep Rs. 4,00,000/- in fixed deposit in the name of Soni Dhama (minor) till she attains the age majority with cumulative interest. Upon maturity, UCO Bank shall release the interest amount to Baby Soni by transferring the same to her savings bank account. However, the principal amount of Rs. 4,00,000/- shall be kept in 40 FDRs of Rs. 10,000/- each for periods 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39 and 40 months respectively with cumulative interest.

(iii) UCO Bank, Delhi High Court Branch shall keep Rs. 4,00,000/- in the name of Vansu Dhama (minor) till he attains majority with cumulative interest. Upon maturity, UCO Bank shall release the interest amount to Vansu Dhama by transferring the same to his savings bank account. However, the principal amount of Rs. 4,00,000/- shall be kept in 40 FDRs of Rs. 10,000/- each for periods 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39 and 40 months respectively with cumulative interest.

14. All the original FDRs shall be retained by UCO Bank, Delhi High Court Branch. However, the photocopies of the same shall be provided to the claimants/ beneficiaries.

15. The claimants shall provide the particulars of their savings bank accounts near their place of residence to UCO Bank, Delhi High Court Branch.

16. No loan or advance or pre-mature discharge shall be permitted without the permission of this Court.

17. The claimants are at liberty to approach this Court for release of further amount in case of any financial exigency.

18. The balance amount, after keeping Rs. 12,00,000/- in FDR, be released to Sorab Dhama, Baby Soni and Master Vansu in equal shares. The share of Sorab Dhama be transferred to his savings bank account whereas the shares of the minor Soni and Vansu be released to them through their guardian/grandfather, Rattan Singh who shall use the said amount for the benefit of the minor children. The TDS of Rs. 33,285/- deposited by New India Assurance Co. Ltd. in terms of order dated 20th October, 2016 be also released to three children in equal proportion.

19. List for disbursement of the enhanced award amount on 2nd March, 2017 at 02:30 p.m.

20. Copy of this judgment be given dasti to learned counsels for the parties under signature of Court Master.

