**(2010) 03 DEL CK 0092**

**In the Delhi High Court**

**Case No :** MAC. APP. No. 181 of 2009

New India Assurance Co. Ltd. APPELLANT

Vs

Sibaram Mandal and Others RESPONDENT

**Date of Decision :** 09-03-2010

**Acts Referred:**

**Citation :** (2010) 03 DEL CK 0092

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

**Bench :** Single Bench

**Advocate :** Pankaj Seth, for the Appellant; Arun Sukhija, for R-1 and 2, for the Respondent

## Judgement

J.R. Midha, J.—The appellant has challenged the award of the learned Tribunal whereby compensation of Rs. 5,31,180/- has been awarded to claimants/ respondents No. 1 and 2.

2. On 22nd February, 1998 at about 8:30pm, the deceased was travelling in blue line bus bearing No. DL-1P-5235 going from Laxmi Nagar to Gole Market. The deceased had to get down from the bus but the driver suddenly applied the brakes and as a result of the impact, the deceased fell down from the bus and the wheel of the bus ran over the left leg of the deceased. The left leg of the deceased was crushed up to 1/3rd of thigh level and her left leg had to be amputated. The deceased was removed to Lady Hardinge Medical College where her left leg was amputated. The deceased suffered brain hemorrhage on 26th May, 1998 resulting in her death.

3. The deceased was survived by her two minor children aged 11 and 14 years who filed the claim petition before the Claims Tribunal. The husband of the deceased had pre-deceased her and, therefore, the minor children filed the claim petition through their maternal aunt.

4. The learned Tribunal has awarded Rs. 1,900/- towards the medicines and medical treatment, Rs. 30,000/- towards conveyance and special diet and Rs.

 

4,49,280/- towards the permanent disability and loss of income. Rs. 50,000/- has been awarded to the children towards loss of love and affection. The total compensation awarded is Rs. 5,31,180/-.

5. The learned Counsel for the appellant submits that while computing the loss of income due to permanent disability, the Claims Tribunal has applied the multiplier of 16 whereas the deceased was aged 38 years at the time of the accident and the appropriate multiplier according to the judgment of the Hon''ble Supreme Court in the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, . The learned Counsel further submits that the Claims Tribunal has taken the permanent disability to be 70% but while computing the compensation the Claims Tribunal has not deducted 30% amount.

6. The impugned award has been perused. The appropriate multiplier at the age of 38 years according to the judgment of the Hon''ble Supreme Court in the case of Sarla Verma v. DTC (Supra) is 15. The multiplier is, therefore, reduced from 16 to 15. The learned Tribunal has taken the permanent disability of the deceased as 70% but while computing the compensation, the learned Tribunal has not deducted 30% on account of permanent disability. The finding of the Claims Tribunal is, therefore, modified. Respondent Nos. 1 and 2 are entitled to compensation of Rs. 3,68,550/- towards loss of income (Rs. 2,925 x 12 x 15 - 30%).

7. The total compensation is computed to be Rs. 4,50,450/- (Rs. 3,68,550 + Rs. 1,900 + Rs. 30,000 + Rs. 50,000). The learned Tribunal has awarded interest @7% per annum which is enhanced to 7.5% per annum in terms of the judgment of the Hon''ble Supreme Court in the case of Dharampal and Ors. v. U.P. State Road Transport Corporation III 2008 ACC (1)SC. The direction to pay penal interest on the award amount @ 12% per annum after the expiry of 30 days from the date of the award passed by the Claims Tribunal is set aside.

8. The appeal is partially allowed and the award amount is reduced from Rs. 5,31,180/- to Rs. 4,50,450/- along with interest @ 7.5% per annum from the date of filing of the petition till realization.

9. The appellant has deposited the entire award amount along with up to date interest with the Claims Tribunal in terms of the order dated 6th April, 2009. However, the said cheques have not been withdrawn by the claimants and the cheques dated 11th May, 2009 must have been expired.

10. The Claims Tribunal is directed to return the two cheques dated 11th May, 2009 deposited by the appellant with the Claims Tribunal on 26th May, 2009 in terms of the order dated 6th April, 2009 to the appellant within two weeks.

11. In the meantime, the appellant shall also give the instruction to its Bank to stop the payment of the said cheques.

12. The appellant is directed to deposit the entire award amount along with up to date interest in terms of this judgment with UCO Bank A/c Sibaram Mandal, Delhi

 

High Court Branch within 30 days.

13. Upon the aforesaid deposit being made, the UCO Bank is directed to release 5% of the award amount to respondent No. 1 and the 5% to respondent No. 2 by transferring the said amount to their respective Saving Bank Account. The remaining amount be kept in fixed deposit in the following manner:

(i) Fixed deposit in respect of 5% of the amount in the name of respondent No. 1 for the period of six months.

(ii) Fixed deposit in respect of 5% of the amount in the name of respondent No. 2 for a period of six months.

(iii) Fixed deposit in respect of 5% of the amount in the name of respondent No. 1 for a period of one year.

(iv) Fixed deposit in respect of 5% of the amount in the name of respondent No. 2 for a period of one year.

(v) Fixed deposit in respect of 5% of the amount in the name of respondent No. 1 for a period of one and a half years.

(vi) Fixed deposit in respect of 5% of the amount in the name of respondent No. 2 for a period of one and a half years.

(vii) Fixed deposit in respect of 5% of the amount in the name of respondent No. 1 for a period of two years.

(viii) Fixed deposit in respect of 5% of the amount in the name of respondent No. 2 for a period of two years.

(ix) Fixed deposit in respect of 5% of the amount in the name of respondent No. 1 for a period of two and a half years.

(x) Fixed deposit in respect of 5% of the amount in the name of respondent No. 2 for a period of two and a half years.

(xi) Fixed deposit in respect of 5% of the amount in the name of respondent No. 1 for a period of three years.

(xii) Fixed deposit in respect of 5% of the amount in the name of respondent No. 2 for a period of three years.

(xiii) Fixed deposit in respect of 5% of the amount in the name of respondent No. 1 for a period of three and a half years.

(xiv) Fixed deposit in respect of 5% of the amount in the name of respondent No. 2 for a period of three and a half years.

(xv) Fixed deposit in respect of 5% of the amount in the name of respondent No. 1 for a period of four years.

(xvi) Fixed deposit in respect of 5% of the amount in the name of respondent

No. 2 for a period of four years.

(xvii) Fixed deposit in respect of 5% of the amount in the name of respondent No. 1 for a period of four and a half years.

(xviii) Fixed deposit in respect of 5% of the amount in the name of respondent No. 2 for a period of four and a half years.

14. The interest on the aforesaid fixed deposits shall be paid monthly by automatic credit of interest in the respective Savings Account of respondents No. 1 and 2.

15. Withdrawal from the aforesaid account shall be permitted to respondents No. 1 and 2 after due verification and the Bank shall issue photo Identity Card to respondents No. 1 and 2 to facilitate identity.

16. No cheque book be issued to respondents No. 1 and 2 without the permission of this Court.

17. The Bank shall issue Fixed Deposit Pass Book instead of the FDRs to respondents No. 1 and 2 and the maturity amount of the FDRs be automatically credited to the Saving Bank Account of the beneficiary at the end of the FDR.

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 and 2, the Bank shall transfer the Savings Account to any other branch according to the convenience of respondents No. 1 and 2.

21. The respondents No. 1 and 2 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 learned Counsel for claimants/respondents No. 1 and 2 seek release of more amount at initial stage.

23. Let the claimants file an appropriate application after utilizing the initial 10% award amount released to them.

24. The statutory amount of Rs. 25,000/- be refunded back to the appellant after the satisfaction of this judgment.

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

26. 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) under the signature of Court Master.