

(2012) 04 DEL CK 0039

In the Delhi High Court

Case No : Mac. App. No. 385 of 2007 and CM No. 8666-67 of 2007

United India Insurance Co.

APPELLANT

Vs

Kanwar Lal and Others

RESPONDENT

Date of Decision : 27-04-2012

Acts Referred:

Citation : (2012) 04 DEL CK 0039

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

Bench : Single Bench

Advocate : Ram Ashray, for the Appellant; Sunit Bansal, A. Mathur and Ms. Sumi Anand, for the Respondent

Final Decision : Dismissed

Judgement

1. The appellant has challenged the award of the Claims Tribunal whereby compensation of Rs. 10,00,000/- has been awarded to respondents No.1 and 2. The appellant seeks reduction of the award amount. The accident dated 17th October, 1998 resulted in the death of Parveen Kumar. The deceased was aged 18 years at the time of the accident and was a student of 12th standard. The deceased was survived by his parents who filed the clam petition before the Claims Tribunal. The Claims Tribunal awarded compensation of Rs. 10,00,000/- to the claimants. The Claims Tribunal directed the appellant to deposit the entire award amount and thereafter recover the same from the owner of the offending vehicle on the ground that the driving licence of the driver of the offending vehicle was found to be fake.

2. The learned counsel for the appellant has urged at the time of hearing of this appeal that the appellant is not liable to pay any compensation on account of violation of the policy and, therefore, the award should have been passed against the owner and driver of the offending vehicle. It is further submitted that the award of Rs. 10,00,000/- is without any basis.

3. The father of the deceased appeared in the witness box as PW-1 and deposed

that he was posted as Superintendent with the office of Commissioner, Central Excise, Gurgaon. He further deposed that the deceased was aged 18 years, 10 months and 3 days at the time of the accident. The deceased was an outstanding/brilliant student of 12th standard in Mount St. Mary's School, Delhi Cantt. and was awarded many certificates by the school. PW-1 further deposed that the deceased was interested to do C.A. and M.B.A. and had a very bright future. The school certificate of the deceased was proved as Ex.CW1/A. PW-1 further deposed that his younger son has completed the engineering course.

4. The Claims Tribunal awarded compensation of Rs. 10,00,000/- to the parents of the deceased following the judgment of the Division Bench of this Court, in the case of Association of Victims of Uphaar Tragedy & Ors., v. UOI 104 (2003) DLT 234 (DB). The findings of the Claims Tribunal recorded in para 24 of the impugned award are reproduced hereunder:-

24. In our case there is substantive evidence that father of the deceased was working as a Superintendent in Central Excise Office at the time of death of deceased. Younger brother of deceased is going to obtain Engineering degree. He was a brilliant student of 12th class at the time of his death of a reputed school of Delhi. Deceased had obtained various merits certificates from school authorities. Deceased wants to become MBA/CA. Deceased was also having a valid motor driving licence. At the time of this accident he himself was driving the car. From these circumstances, it is well established in this case that deceased belonged to a family of status having a bright future ahead of him. After considering the ratio of law laid-down in above cited authorities this court is of opinion that petitioners will be entitled for a total compensation of Rs.10,00,000/- along with 7% interest. This issue is decided accordingly.

5. In Association of Victims of Uphaar Tragedy & Ors. (supra), 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 that 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)

6. 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)

7. 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.

8. 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.

9. Following the judgment of the Supreme Court in *Municipal Corporation of Delhi v. Association of Victims of Uphaar Tragedy* (supra), this Court assumes the income of the deceased to be Rs. 10,800/- per month considering that the deceased was a student of 12th standard in a reputed school of Delhi and was ambitious to become MBA/C.A., his brother is doing engineering course and his father is working as a Superintendent in Central Excise office. The deceased was unmarried and aged 18 years at the time of the accident. The parents of the deceased were aged 37 and 44 years respectively at the time of the accident. As per the judgment of the Supreme Court in *Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another*, the appropriate multiplier according to the age of the mother is 15 and the appropriate deduction towards personal expenses is 1/2. Deducting 1/2 towards personal expenses and applying the multiplier of 15, the loss of dependency is computed to be Rs. 9,72,000/-. Rs. 10,000/- is awarded towards loss of love and affection, Rs. 10,000/- towards loss of estate and Rs. 8,000/- towards funeral expenses. The total compensation is computed to be Rs. 10,00,000/-. Since the driver of the offending vehicle was holding a fake driving licence, the appellant is entitled to recovery rights against the owner of the offending vehicle after making the payment of the award amount to the claimants. For the reasons as aforesaid, the compensation of Rs. 10,00,000/- awarded by the Claims Tribunal is upheld. The appeal is dismissed. The appellant has deposited the entire award amount with UCO Bank, Delhi High Court Branch and the same has been kept in fixed deposit for the period of five years in the joint names of respondents No.1 and 2 on which monthly interest is being paid to them. The original fixed deposits have been retained by the bank in terms of the order dated 14th October, 2009. In view of the dismissal of this appeal, the UCO Bank is directed to hand over the original fixed deposit receipts

to respondents No.1 and 2.