(2010) 03 DEL CK 0301

In the Delhi High Court

Case No : MAC. App. No. 106 of 2007

United India Insurance Co. Ltd APPELLANT

Vs

Sajitha Muhammed and Others RESPONDENT

Date of Decision : 19-03-2010

Acts Referred:

Citation : (2010) 03 DEL CK 0301

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

Bench : Single Bench

Advocate : Udit Kumar Chaturvedi for Mr. A.K. De, for the Appellant; K.P. Menon, for R-1 to R-3, for the Respondent

Final Decision : Allowed

Judgement

J.R. Midha

1. The appellants have challenged the award of the learned Tribunal whereby compensation of Rs.23,21,940/- has been awarded to claimants/respondents No.1 to 3.

2. The accident dated 31st December, 2002, resulted in the death of K.P. Muhammed. The deceased was survived by his widow and two minor children who filed the claim petition before the learned Tribunal.

3. The deceased was aged about 38 years at the time of the accident and was carrying on business of import and export of vegetables. The learned Tribunal took the income of the deceased as Rs.2,65,147/- per annum on the basis of his Income Tax Returns. The Claims Tribunal deducted 1/3rd towards the personal expenses of the deceased and applied the multiplier of 13 to compute the loss of dependency at Rs.22,97,940/-. Rs.5,000/- has been awarded towards the transportation of dead body, funeral expenses and loss of estate, Rs.4,000/- towards embalming charges and Rs.5,000/- towards loss of consortium. The learned Tribunal has awarded total compensation of Rs.23,21,940/- to claimants/ respondents No. 1 to 3.

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

(i) The driver of the offending vehicle was holding a driving licence to drive LMV (transport vehicle) but was not authorized to drive heavy goods vehicle and, therefore, the appellant is entitled to recovery rights against the owner of the offending vehicle.

(ii) The rate of interest on the award amount be reduced from 9% to 7%.

5. With respect to the first ground relating to the driving licence, it is noted that notice of this appeal was issued on the limited ground of quantum and, therefore, this ground cannot be agitated by the appellant at this stage. Notwithstanding the above objection, it is noted that the driver of the offending vehicle was holding a valid driving licence to drive LMV and it was endorsed to drive transport vehicles. The learned counsel for the appellant submits that the driver was not authorized to drive heavy vehicle carrying hazardous substances for which a special licence is required. The Claims Tribunal has discarded this plea of the appellant on the ground that by virtue of the endorsement on the licence, the driver was authorized to drive transport vehicle which was not carrying any hazardous substance. There is no infirmity in the finding of the Claims Tribunal and the same is upheld.

6. The Claims Tribunal has awarded interest @ 7.5% per annum from the date of filing of the claim petition till the date of the award and future interest @ 9% per annum after one month of the award, till realization. The interest awarded by the Claims Tribunal is upheld.

7. 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, is 15, whereas the Claims Tribunal has applied the multiplier of 13. The Claims Tribunal has also not awarded any compensation for loss of love and affection. The impugned award warrants enhancement of multiplier by two. However, since the claimants have not preferred any cross-objections, no further orders are warranted.

8. For the aforesaid reasons, the appeal is dismissed.

9. The appellant has deposited 60% of the award amount with the Claims Tribunal in terms of the order dated 21st February, 2007 and the same has been released to the claimants as per the award.

10. The remaining 40% of the award amount, i.e. Rs.14,11,802/- has been deposited by the appellant in UCO Bank A/c Sajitha Muhammed, Delhi High Court Branch, in terms of order dated 11th December, 2009.

11. The claimants/respondents are present in Court and they have been examined with respect to their financial status and financial needs. UCO Bank is

directed to keep a sum of Rs.13,00,000/- in fixed deposit in the following manner and the remaining amount be released to respondent No.1 by transferring the same to her Savings Bank Account:-

(i) Fixed deposit of Rs.50,000/- in the name of respondent No.1 for a period of six months.

(ii) Fixed deposit of Rs.50,000/- in the name of respondent No.1 for a period of one year.

(iii) Fixed deposit of Rs.50,000/- in the name of respondent No.1 for a period of one and a half years.

(iv) Fixed deposit of Rs.50,000/- in the name of respondent No.1 for a period of two years.

(v) Fixed deposit of Rs.50,000/- in the name of respondent No.1 for a period of two and a half years.

(vi) Fixed deposit of Rs.50,000/- in the name of respondent No.1 for a period of three years.

(vii) Fixed deposit of Rs.50,000/- in the name of respondent No.1 for a period of three and a half years.

(viii) Fixed deposit of Rs.50,000/- in the name of respondent No.1 for a period of four years.

(ix) Fixed deposit of Rs.50,000/- in the name of respondent No.1 for a period of four and a half years.

(x) Fixed deposit of Rs.50,000/- in the name of respondent No.1 for a period of five years.

(xi) Fixed deposit of Rs.50,000/- in the name of respondent No.1 for a period of five and a half years.

(xii) Fixed deposit of Rs.50,000/- in the name of respondent No.1 for a period of six years.

(xiii) Fixed deposit of Rs.50,000/- in the name of respondent No.1 for a period of six and a half years.

(xiv) Fixed deposit of Rs.50,000/- in the name of respondent No.1 for a period of seven years. (xv) Fixed deposit of Rs.3,00,000/- in the name of respondent No.2 till he attains the age of 20 years.

(xiv) Fixed deposit of Rs.3,00,000/- in the name of respondent No.3 till she attains the age of 20 years.

12. The interest on the aforesaid fixed deposits shall be paid monthly by automatic credit of interest in the Savings Account of respondent No.1.

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

14. No cheque book be issued to appellant No.1 without the permission of this Court.

15. The Bank shall issue Fixed Deposit Pass Book instead of the FDRs to the appellants and the maturity amount of the FDRs be automatically credited to the Saving Bank Account of the beneficiary at the end of the FDR.

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

19. The respondent Nos.1 to 3 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.

20. Statutory amount of Rs.25,000/- deposited by the appellant along with this appeal, be refunded back to the appellant through counsel within four weeks.

21. Copy of the order be given dasti to counsel for both the parties under the signatures of the Court Master. 22. 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.