

(2012) 05 DEL CK 0675

Delhi High Court

Case No: MAC. App. No. 88 of 2005

Sunita Devi and Others

APPELLANT

Vs

Ram Niwas and Others

RESPONDENT

Date of Decision: May 11, 2012

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 41 Rule 27

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

Bench: Single Bench

Advocate: Rajiv Khosla, Mr. Harshit Jain and Ms. Pooja Chauhan, for the Appellant; Pankaj Seth, for the Respondent

Judgement

J.R. Midha, J.

The appellants have challenged the award of the Claims Tribunal whereby compensation of Rs. 2,87,520/- has been awarded to them. The appellants seek enhancement of the award amount. The accident dated 16th October, 1994 resulted in the death of Vinod Kumar. The deceased was survived by his widow, minor daughter and father who filed the claim petition before the Claims Tribunal. The deceased was aged 20 years at the time of the accident and was doing dairy business as well as agriculture. It was claimed that the deceased was earning Rs. 14,000/- per month. However, in the absence of any documentary proof of income, the Claims Tribunal assumed the income of the deceased as Rs. 2,150/- per month, deducted 1/3rd towards the personal expenses of the deceased and applied the multiplier of 16 to compute the loss of dependency at Rs. 2,75,520/- . The Claims Tribunal has awarded Rs. 10,000/- towards loss of consortium and Rs. 2,000/- towards the funeral expenses. The total compensation awarded is Rs. 2,87,520/- .

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

- (i) The income of the deceased be taken as Rs. 14,000/- per month.

(ii) The multiplier be enhanced from 16 to 18.

(iii) The compensation be awarded for loss of love and affection and loss of estate.

(iv) The rate of interest be enhanced from 7% per annum to 12% per annum.

3. During the pendency of this appeal, the appellants have filed CM No. 8987/2009 under Order XLI Rule 27 of the CPC for permission to lead additional evidence with respect to the income of the deceased from dairy business and agriculture. Vide order dated 6th July, 2009, the aforesaid application was allowed and the appellant was permitted to lead additional evidence in pursuance to which the appellants examined two witnesses.

4. Ms. Sunita Devi, widow of the deceased appeared as AW-2 and Sh. Jagbir, neighbour of the deceased appeared in the witness box as AW-1. Both of them deposed that the deceased was engaged in dairy business as well as agriculture, the deceased was maintaining 9 - 10 buffalos, the deceased used to sell the milk, he used to grow vegetable/grains on the agricultural land and used to sell the same in the Azadpur Mandi. AW-1 and AW-2 further deposed that the deceased used to earn Rs. 10,000/- per month from dairy business and Rs. 4,000/- from selling vegetable/grains. AW-2 further deposed that the deceased was the only earning member in the family as the deceased used to manage the dairy business as well as grain.

5. AW-1 and AW-2 have proved the occupation of the deceased. However, the witnesses have not produced any documentary evidence of the income. The oral evidence of the widow and neighbour of the deceased is not sufficient to prove that the income of the deceased was Rs. 14,000/- per month. In any case, the income from agriculture would have continued after the death of the deceased and therefore, only the value of the services of the deceased can be taken into consideration. Taking the occupation of the deceased into consideration, the income of the deceased is presumed to be Rs. 4,000/- per month. As per the judgment of [Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another](#), the appropriate multiplier at the age of 20 years is 18. The multiplier is, therefore, enhanced from 16 to 18. Rs. 10,000/- is awarded towards loss of love and affection and Rs. 10,000/- is awarded towards loss of estate. In [Municipal Corporation of Delhi, Delhi Vs. Association of Victims of Uphaar Tragedy and Others](#), the Supreme Court has awarded interest @ 9% per annum. Following the aforesaid judgment, the rate of interest is enhanced from 7% per annum to 9% per annum. The appellant is entitled to total compensation of Rs. 6,08,000/- as per the break-up given hereunder:-

1.	Income of the deceased	:	Rs. 4,000/-
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2.	Less 1/3rd towards personal expenses of the deceased	:	Rs. 2,666/-
3.	Total loss of dependency (Applying the multiplier of 18)	:	Rs. 5,76,000/-
4.	Compensation towards loss of love and affection	:	Rs. 10,000/-
5.	Compensation towards loss of consortium	:	Rs. 10,000/-
6.	Compensation towards loss of estate	:	Rs. 10,000/-
7.	Compensation towards funeral expenses	:	Rs. 2,000/-
	Total	:	Rs. 6,08,000/-

6. For the reasons as stated hereinabove, the appeal is allowed and the award amount is enhanced from Rs. 2,87,520/- to Rs. 6,08,000/- along with enhanced interest @ 9% per annum from the date of filing of the petition till realization in terms of the judgment of the Supreme Court in Municipal Corporation of Delhi v. Association of Victims of Uphaar Tragedy (supra). The enhanced award amount along with interest be deposited with UCO Bank, Delhi High Court Branch by means of cheque drawn in the name of UCO Bank A/c Sunita Devi.

7. Upon the aforesaid amount being deposited, the UCO Bank is directed to release 10% to appellant No. 1 and 10% to appellant No. 2 by transferring the same to their Saving Bank Account. The remaining 80% of the amount be kept in fixed deposit in the following manner:-

(i) Fixed deposit in respect of 10% for a period of one year in the name of appellant No. 1.

(ii) Fixed deposit in respect of 10% for a period of one year in the name of appellant No. 2.

(iii) Fixed deposit in respect of 10% for a period of two years in the name of appellant No. 1.

(iv) Fixed deposit in respect of 10% for a period of three years in the name of appellant No. 2.

(v) Fixed deposit in respect of 10% for a period of four years in the name of appellant No. 1.

(vi) Fixed deposit in respect of 10% for a period of five years in the name of appellant No. 1.

(vii) Fixed deposit in respect of 10% for a period of six years in the name of appellant No. 1.

(viii) Fixed deposit in respect of 10% for a period of seven years in the name of appellant No. 1.

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

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

10. No cheque book be issued to the beneficiaries without the permission of this Court.

11. 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 beneficiaries 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 beneficiaries.

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

13. Half yearly statement of account be filed by the Bank in this Court.

14. On the request of the beneficiaries, Bank shall transfer the Savings Account to any other branch according to their convenience.

15. The beneficiaries 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).