

(2018) 05 DEL CK 0458
DELHI HIGH COURT
Case No: MAC.APP. 297 OF 2018

SAJIDA KHATUN &
ORS

APPELLANT

Vs

RAM NIWAS & ORS
(M/S NEW INDIA
ASSURNACE CO LTD)

RESPONDENT

Date of Decision: May 30, 2018

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

Bench: Single Bench

Advocate: R.S. Roy, Vandana Surana

Final Decision: Allowed

Judgement

1. The appellants have challenged the award of Claims Tribunal whereby the compensation of Rs.7,24,000/- has been awarded to the appellants. The appellants are seeking enhancement of compensation amount.

2. The accident dated 12th July 2008 resulted in death of Md. Mobin. The deceased was aged about 44 years and survived by his widow, three sons and one daughter who claimed compensation. The deceased was selfemployed doing business of selling fruits and vegetables. According to the claimants, the deceased was earning Rs.9,000/- per month.

3. The Claims Tribunal took the income of the deceased as per minimum wages of Rs.3,633/- per month, added 25% towards future prospects, deducted 1/4th towards his personal expenses and applied multiplier of 14 towards to compute the loss of dependency as Rs.6,53,904/. The Claims Tribunal awarded Rs. 40,000/- towards loss of consortium, 15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses. The total

compensation awarded is Rs.7,24,000/- (Rs.7,23,904/- rounded off).

4. Learned counsel for the appellant urged at the time of hearing that the income of the deceased be taken as Rs. 9,000/- per month. It is submitted

that appellants' proved from the statement of bank account of the deceased, for the period of one year from July, 2007 to July, 2008. It is

submitted that the deceased deposited cash income in the range of Rs.5,000/- per month to Rs. 85,000/- per month and the average amount deposited

is Rs. 21,842/- per month. It is further submitted that the future prospects be enhanced from 25% to 40 %.

5. Learned counsel for the respondent urged at the time of hearing, multiplier be reduced from 16 to 14 as the deceased was 44 years at the time of accident.

6. The law is well settled that it is not mandatory to resort to minimum wages to compute the compensation in each and every case. Reference is

made to Municipal Corporation of Delhi v. Association of Victims of Uphaar Tragedy (supra), in which 59 persons died 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/- per month. The relevant portion of the judgment is as under:

“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 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.â€ (Emphasis Supplied)

7. In *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 mean 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:- $(Rs.8,333/- \text{ less } 1/3 \text{ rd}) \times 12 \times 15 = Rs.10 \text{ lakhs.}$

For victims aged less than 20 years:-

$(Rs.6249/- \text{ less } 1/3 \text{rd}) \times 15 = Rs.7.5 \text{ lakhs.}$

8. It is relevant to note that the *Uphaar Tragedy* (supra), took place on 13th June, 1997 and the minimum wages at the relevant time were less than

Rs.2,600/- 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.

9. This Court has applied the principles laid down in Uphaar tragedy (supra), case to compute the compensation in National Insurance Co. Ltd.

v. Komal, 2014 ACJ 1540, National Insurance Co. Ltd. v. Bhateri, 2012 SCC Online Del 2409, Uttar Pradesh State Road Transport Corporation v.

Reena Devi, 2016 SCC OnLine Del 5307, Oriental Insurance Co. Ltd v. Moni Arora, 2016 SCC OnLine Del 5190, New India Assurance Co. Ltd. v.

Preeti 2016 SCC OnLine Del 4709, Oriental Insurance Co. Ltd v. Suman, 2016 SCC OnLine Del 4715 and New India Assurance Co Ltd v. Master

Sorab Dhama, 2017 ACJ 1576.

10. This Court is of the view that the Claims Tribunal erred in ignoring the statement of the bank account of the deceased from July, 2007 to July,

2008, and in taking the income of the deceased as Rs.3,633/- per month. Following the principles laid down in Uphaar tragedy (supra) and applied by

this Court in the cases mentioned above, the income of the deceased is assessed at Rs. 9,000/- per month. The Claims Tribunal has granted future

prospects of 25% in terms of National Insurance Co. Limited v. Pranay Sethi, (2017) 16 SCC 680. The multiplier is reduced from 16 to 14 as the

deceased was 44 years old at the time of accident.

11. Taking income of the deceased as Rs.9,000/- per month, adding 25% towards future prospects, deducting 1/4th towards his personal expenses and

applying the multiplier of 14, the loss of dependency is computed as Rs.14,17,500/-. Adding Rs. 40,000/- towards loss of consortium, Rs.15,000/-

towards funeral expenses and Rs.15,000/- towards loss of estate, the total compensation as computed as Rs.14,87,500/-.

12. The appeal is allowed and the compensation is enhanced from Rs.7,24,000/- to Rs.14,87,500/- along with interest @ 9% per annum from the date

of institution of the claim i.e. 27th July, 2008 till realization.

13. Vide order dated 20th March, 2018, this Court had directed respondent no.3 to deposit the entire award amount with the Registrar General of this

Court. Respondent no.3 is directed to produce proof of deposit on the next date of hearing.

14. Respondent no.3 is further directed to deposit the enhanced award amount with the Registrar General of this Court within four weeks from today.

15. The appellants shall remain present on the next date of hearing along with the passbooks of their savings bank accounts near the place of their

residence along with the necessary endorsement in terms of order dated 20th March, 2018 as well as along with their PAN cards and Aadhaar cards.

16. List for disbursement of compensation amount on 14th July, 2018.

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