

SUNIL CHADHA & ANR Appellants
Through : Mr. Suman Kapoor, Adv.

versus

NEW INDIA INSURANCE CO. & ORS Respondents
Through : Mr. D.K. Sharma, Adv.

CORAM :-
THE HON'BLE MR. JUSTICE J.R. MIDHA

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| 1. | Whether Reporters of Local papers may be allowed to see the Judgment? | YES |
| 2. | To be referred to the Reporter or not? | YES |
| 3. | Whether the judgment should be reported in the Digest? | YES |

JUDGMENT (Oral)

1. The appellants have challenged the award of the learned Tribunal whereby compensation of Rs.5,95,600/- has been awarded to the appellants. The appellants seek enhancement of the award amount.

2. The accident dated 25th May, 2005 resulted in the death of Sunav Chadha. The deceased was survived by his parents who filed the claim petition before the learned Tribunal.

3. The deceased was 22 years old at the time of the accident and was working as a Sales Executive with M/s Studio-22. The appellants claim the income of the deceased to be Rs.28,000/- per month. The employer of the deceased came in the witness

box as PW-3 and deposed that he was paying a salary of Rs.28,000/- per month to the deceased. However, the learned Tribunal disbelieved the witness considering that the income was paid in cash and the appointment letter, confirmation letter did not bear the signatures of the deceased and the vouchers and other records of payment of salary were not produced. The learned Tribunal assumed the income of the deceased to be Rs.11,250/-, added 50% towards future prospects and the income of the deceased for computation of compensation was taken to be Rs.16,900/- per month, 50% was deducted towards the personal expenses of the deceased and multiplier of 9 was applied to compute the loss of dependency. Rs.10,000/- has been awarded towards funeral expenses, Rs.40,000/- towards loss of love and affection and Rs.30,000/- towards loss of estate. The total compensation has been computed to be Rs.9,92,600/- out of which 40% has been deducted towards contributory negligence of the deceased and the compensation of Rs.5,95,600/- has been awarded to the appellants.

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

- (i) The finding of the learned Tribunal with respect to the 40% contributory negligence of the deceased be set aside.
- (ii) The multiplier be enhanced from 9 to 13.
- (iii) The rate of interest be enhanced from 7% per annum to 7.5% per annum.

6. With respect to the finding of contributory negligence, the learned counsel for the appellants has referred to and relied on the statement of eye-witness PW-2 who deposed that the crane suddenly came on the wrong side of the road and hit the car being driven by the deceased. The learned counsel for respondent No.1 refers to and relies upon the site plan on the record of the learned Tribunal according to which the crane was on the correct side of the road whereas the car was on the wrong side of the road. However, the site plan has not been proved as the Investigating Officer of the Police was not called in the witness box. The learned counsel for the appellants submit that the site plan has been prepared by the police at the instance of the driver of the crane who was himself the accused and the site plan does not depict the correct position of the vehicles at the time of the accident.

7. Considering the facts and circumstances of this case and the evidence urged by the parties, it is clear that there has been head on collision between the offending vehicle and the car driven by the deceased himself. Even if the offending vehicle is assumed to be on the wrong side of the road, it was the heavy crane and its speed could not have been very high and the deceased certainly had the opportunity of avoiding the accident. The finding of contributory negligence of the deceased is, therefore, upheld. However, the contributory negligence of the deceased is taken to be 25% instead of 40%.

8. The deceased was aged 22 years at the time of the accident

and he was survived by his parents aged 49 and 52 years respectively at the time of the accident. The appropriate multiplier according to the age of the mother of the deceased is 13 and, therefore, the multiplier is enhanced from 9 to 13.

9. The learned Tribunal has awarded interest @7% per annum. Following the judgment of the Hon'ble Supreme Court in the case of **Dharampal vs. U.P. State Road Transport Corporation, III 2008 ACC (1) SC**, the rate of interest is enhanced from 7% per annum to 7.5% per annum.

10. Taking the income of the deceased to be Rs.16,900/- per month, deducting 1/2 towards personal expenses, applying the multiplier of 13 and deducting 25% towards contributory negligence of the deceased, the loss of dependency of the appellants is computed to be Rs.9,88,650/- [(Rs.16,900 x 1/2 x 12 x 13) – 25%]. Adding Rs.10,000/- towards funeral expenses, Rs.40,000/- towards loss of love and affection, Rs.30,000/- towards loss of estate, the total compensation is computed to be Rs.10,68,650/- (Rs.9,88,650 + Rs.10,000 + Rs.40,000 + Rs.30,000)

11. The appeal is allowed and the award amount is enhanced from Rs.5,45,600/- to Rs.10,68,650/- along with interest @7.5% per annum from the date of filing of the petition till realization.

12. The enhanced award amount along with interest be deposited by respondent No.1 with UCO Bank, Delhi High Court Branch A/c Sunil Chadha and Vandana Chadha through Mr. M.M.

Tandon, Member-Retail Team, UCO Bank Zonal, Parliament Street, New Delhi (Mobile No. 09310356400) within 30 days.

13. Upon the aforesaid amount being deposited, UCO Bank is directed to release 50% of the same to the appellants by transferring the said amount to their Saving Bank Account and the remaining amount be kept in fixed deposit for a period of 2½ years on which monthly interest be paid to them.

14. The interest on the aforesaid fixed deposits shall be paid monthly by automatic credit of interest in the Savings Account of the appellants.

15. Withdrawal from the aforesaid accounts shall be permitted to the appellants after due verification and the Bank shall issue photo Identity Card to the appellants to facilitate identity.

16. The original FDRs shall be retained by UCO Bank in safe custody. However, the original Pass Book shall be given to the appellants along with the photocopy of the FDRs.

17. The original Fixed Deposit Receipts shall be handed over to appellants at the expiry of the period of the FDRs.

18. No loan, advance or withdrawal shall be allowed on the said fixed deposits without the permission of this Court.

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

20. Copy of the order be given dasti to counsel for both the parties under the signature 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 UCO Bank, Delhi High Court Branch.

J.R. MIDHA, J

NOVEMBER 30, 2009

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