

\$~10

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 16th February, 2016

+ **MAC.APP. 1241/2012**

SHASHI KALA & ANR

..... Appellant

Through: Mr. Bhupesh Narula and Mr. Jitendra Singh, Advs.

versus

PIYUSH AGGARWAL & ORS

..... Respondent

Through: Mr. Pradeep Gaur, Adv. proxy for Mr. K L Nandwani, Adv. for R-3

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The appellants are wife and mother of Ravi Kumar, an employee of Central Industrial Security Force (CISF) who suffered death in a motor vehicular accident that occurred at about 5.45 PM on 30.07.2011 at the junction of Rajpath and Janpath involving collision between his motorcycle bearing registration No.UKP 81AD 9910 (the motorcycle) and car bearing registration No.DL 4CND 1653 (the offending vehicle). The offending vehicle was admittedly insured against third party risk with the third respondent herein. The claim petition filed under Section 166 and 140 of Motor Vehicles Act, 1988 (MV Act) was registered by the Tribunal as suit No.684/2011 in which the driver and owner of the offending vehicle were impleaded as first and second respondents in addition to the insurer as the

third respondent. The Tribunal held inquiry and, by judgment dated 20.07.2012, awarded compensation in the sum of ₹29,40,880/- with interest at 9% per annum from the date of filing of the petition till realisation.

2. The claimants in appeal are aggrieved with the calculation of compensation on account of loss of dependency as also on account of non-pecuniary damages.

3. It is pointed out that the salary slip (Ex.PW1/6) of the deceased proved during inquiry showed his gross-salary at ₹16,603/- per month which was inclusive of mess charges of ₹797/-. The Tribunal did not take into account the mess charges on the ground that they were personal expenses of the deceased. Since deduction on account of personal expenses was further made, the non-consideration of mess charges was not just and proper. Even otherwise, in terms of dicta in *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121, the only deduction to be considered is on account of income tax liability. Thus, the gross income of the deceased as shown by the salary slip should have been taken in entirety except of course the washing allowance of ₹600/- as fairly conceded by the claimants. But then, the evidence led also showed (Ex.PW-1/7) that the family accommodation allowance stood increased from ₹700/- per month to ₹875/- per month w.e.f. 01.01.2011 i.e. before the accidental death. In these circumstances, the said increased allowance should also have been added to the computation. Thus, the monthly income of the deceased at the time of death is computed at ₹16,718/-.

4. While factoring in the liability towards income tax, the Tribunal applied the thumb rule of assuming that 10% would have to be paid on that account. This approach was not correct inasmuch as for financial year

2011-12, the income up to ₹1,80,000/- was exempt from tax. In these circumstances the deduction on account of income tax will have to be reworked. Since the gross salary for the entire financial year on the basis of monthly income of ₹16,718/- would come to ₹20,616/-, the income of ₹1,80,000/- being exempt, the tax liability is to be calculated only at ₹2,60,616/-. Taking 10% as the rate of income tax applicable, the income needs to be reduced up to ₹2,061/-. Thus, the net income comes to ₹1,98,555/-. Since the number of dependants was only two, 1/3rd needs to be deducted on account of personal and living expenses. Thus, the annual loss of dependency comes to $(1,98,555 \times 2 \div 3)$ ₹1,32,370/-. Adding the component of prospects of future increase, the total loss of dependency would come to ₹1,98,555/-. On the multiplier of 17, the total loss of dependency is computed at $(1,98,555 \times 17)$ ₹33,75,435/-.

5. The Tribunal awarded ₹10,000/- each on the ground of funeral expenses, loss of consortium, loss of estate and loss of love & affection. The said award is highly deficient. In *Rajesh & Ors. vs. Rajbir & Ors.*, (2013) 9 SCC 54, the Supreme Court awarded ₹1 lakh each on account of loss of consortium and loss of love & affection besides ₹25,000/- on account of funeral expense. In *Shashikala v. Gangalakshamma* (2015) 9 SCC 150, the Supreme Court adopted similar benchmark for award on the said three heads also adding ₹75,000/- towards loss of estate. In the facts and circumstances of this case where the accident had occurred in 2011, similar non-pecuniary damages deserve to be awarded.

6. Thus, to the loss of dependency as calculated above, an amount of ₹2,50,000/- put together on all the above mentioned heads needs to be added. The total compensation payable in the case comes to ₹36,25,435/-

rounded off to ₹36,26,000/- (Rupees Thirty Six Lakhs and Twenty Six Thousand only).

7. The award of compensation is modified as above. It shall carry interest at the rate levied by the Tribunal and shall be apportioned in the manner directed in the impugned judgment.

8. The insurance company is directed to deposit the awarded compensation with the Tribunal in terms of the modified award as above within 30 days of this order, failing which the claimants may enforce it by execution application in accordance with law.

9. Tribunal's record be returned.

R.K. GAUBA
(JUDGE)

FEBRUARY 16, 2016
VLD