$~R-452 & 453

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

Decided on: 09th November, 2017

\+ MAC APPEAL 90/2012 and CM 1435/2012, 1436/2012 and 2472/2013 (cross objections)

STATE OF UTTAR PRADESH & ORS. ..... Appellants
Through: None

versus

ASHA SHAH & ORS. ..... Respondents
Through: Ms. Kavita Tyagi for Mr. Navneet Goyal, Advocate

\+ MAC APPEAL 92/2012 and CM 1448/2012, 1449/2012, 2003/2013 (cross objections) and 2004/2013

STATE OF UTTAR PRADESH & ORS. ..... Appellants
Through: None

versus

SHAKUNTALA DEVI & ORS. ..... Respondents
Through: Ms. Kavita Tyagi for Mr. Navneet Goyal, Advocate

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. On 10.10.1996, a motor vehicular accident took place on account of the negligent driving of a motor vehicle bearing registration no.UP-T-4662 of the appellants, it striking against a three wheeler scooter bearing registration no.DL-1RB-3709 resulting in injuries

being suffered by Durga Charan Shah (then 74 years old) and Dr. Sita Ram Aggarwal (then 42 years old), both dying in the consequence. Two accident claim cases were instituted, one (suit no.149/2007) by the wife of Durga Charan Shah and, the other (suit no.150/2007), by the members of the family dependent on Dr. Sita Ram Aggarwal.

2. Both cases were clubbed for inquiry and decided by the tribunal by a common judgment dated 04.01.2010, whereby it was held that the accident had been caused due to the negligence on the part of the driver of the vehicle whose owners are the appellants.

3. The appeals were filed questioning the liability fastened also taking exception to the calculation. The claimant in each case have come up with cross-objections (CM 2472/2013 and CM 2003/2013) seeking enhancement and also seeking condonation of delay.

4. These appeals were admitted to come up in due course by orders dated 13.02.2015. When they are taken up for hearing, there is no appearance on behalf of the appellants. The matters have been heard with the assistance of the learned counsel for the claimants and the record perused.

5. In the case of claim on account of death of Durga Charan Shah, his wife (Shakuntala Devi), the original claimant, having died during the pendency, the other legal heirs were substituted. The tribunal found from the evidence that the deceased Durga Charan Shah was a qualified Mining Engineer and was paying income tax. It, however, declined to grant any compensation on account of the loss of dependency on the ground that the only dependent Shakuntala Devi had also died. The claimants had proved Rs.1,17,529/- as the medical

expenditure incurred during the period Durga Charan Shah had remained under treatment after the accident till death on 24.10.1996. The said amount was included in the compensation and Rs.20,000/- each towards loss of love and affection being added for the five claimants, the total compensation in the sum of Rs.2,17,529/- was awarded.

6. The contention of the appellant in case of claim on account of death of Durga Charan Shah as to the error relating to the "income, age and other facts" is frivolous as the tribunal had, in fact, failed to grant appropriate award for loss of dependency. This court accepts the grievance of the claimants that in the case of death of Durga Charan Shah, the issue of loss of dependency could not have been short-shrifted in the manner done. The claim petition had been filed by the widow Shakuntala Devi. She died on 18.04.1999 during the pendency of the claim. The right to claim loss of dependency had crystallized on the date cause of action arose, which cannot be defeated by the subsequent event of death, such loss now being loss to the estate.

7. It is noted that though Dilip Shah (PW-3), son of the deceased Durga Charan Shah, testified that his father was qualified Mining Engineer and was earning his livelihood in the sum of Rs.1,00,000/- p.a. from his business, also paying income tax, no documents in support were submitted. In these circumstances, such plea cannot be accepted. The accident having occurred on 10.10.1996, the calculation will have to be made with the minimum wages (Rs.2437/-) payable to a graduate. Since the deceased was 74 years old, the multiplier of 5 would apply. The children at that time being self-

reliant, personal and living expenses to the extent of 50% will have to be deducted. Having regard to the age at which the death occurred, there is no scope for any future prospects to be factored in. Thus, the loss of dependency in the case of death of Durga Charan Shah is calculated as [Rs.2437/2 x 12 x 5] Rs.73,110/-.

8. Following the ruling of a Constitution Bench of the Supreme Court rendered on 31.10.2017 in *SLP (C) 25590/2014, National Insurance Company Ltd. Vs. Pranay Sethi and Ors.,* the non-pecuniary heads are awarded in the amounts of Rs.15,000/- each for loss of estate and funeral expenses besides Rs.40,000/- for loss of consortium. The tribunal also awarded Rs.1,17,529/- for medical expenses. The same is included. The total compensation in the case of death of Durga Charan Shah is, therefore, calculated as [Rs.73,110/- + Rs.15,000/- + Rs.15,000/-+ Rs.40,000/- + Rs.117529/-) = Rs.2,60,639/-, rounded off to Rs.2,61,000/- (Rupees Two lakh and sixty one thousand only).

9. In the case of claim on account of death of Dr. Sita Ram Aggarwal, the tribunal found, on the basis of the income tax return for the financial year 1995-1996, that his annual income as a Medical Superintendent (Specialist) was Rs.87,358/- excluding tax liability. The tribunal deducted one-third towards personal and living expenses and having regard to the age (42 years), applied the multiplier of 14 to compute the compensation for loss of dependency at Rs.8,15,346/-. It added Rs.10,000/- towards cremation expenses and Rs.10,000/- towards loss of consortium and awarded the total amount of Rs.8,35,346/-.

10. In the case of claim on account of death of Dr. Sita Ram Aggarwal, the reference in pleadings to the earning of Rs.5,000/- by the appellant is inappropriate as the evidence about the income is what is to be seen and taken into account. It is noted that Manoj Kumar Singh (PW-6), Manager (Personnel) of Bharat Coking Coal Ltd. had proved that the deceased was employed as Medical Superintendent at their hospital, his last emoluments having been proved by certificate (Ex. P-8). The said document shows the total earnings of Rs.81,526/- during the period between April 1996 and 10.10.1996 (i.e. 190 days), the date his death occurred. This would mean the monthly income excluding conveyance allowance (1200 p.m.) was [Rs.81,526/190 x 30] Rs.12,872.53, rounded off to Rs.12,873/-. Adding the conveyance allowance of Rs.1200/-, the monthly income comes to [Rs.12,873/- + Rs.1,200/-] Rs.14,073/-. The annual income thus is worked out as [Rs.14,073/- x 12] Rs.1,68,876/-.

11. Having regard to the rates of income tax payable during the relevant period, the income tax liability would come to Rs.40,000/-. Thus, the net annual income on which loss of dependency has to be calculated is computed as [Rs.1,68,876/- (-) Rs.40,000/-] Rs.1,28,876/- (Rupees One lakh twenty eight thousand eight hundred and seventy six only).

12. Following *Pranay Sethi* (supra), the element of future prospects to the extent of 30% deserves to be added. Thus, the income on which the loss of dependency had to be worked out is calculated as [Rs.1,28,876/- x 130/100] Rs.1,67,538.80, rounded off to Rs.1,67,539/-. Deducting one-third towards personal and living

expenses and applying the multiplier of 14, the loss of dependency comes to [Rs.1,67,539/- x 2/3 x 14] Rs.15,63,697.33, rounded off to Rs.15,64,000/-.

13. Following the dispensation on non-pecuniary damages as per *Pranay Sethi* (supra), Rs.15,000/- each are added towards loss of estate and funeral expenses and Rs.40,000/- towards loss of consortium. The total compensation in the case comes to [Rs.15,64,000/- + Rs.15,000/- + Rs.15,000/- + Rs.40,000/-] Rs.16,34,000/- (Rupees Sixteen lakh and thirty four thousand only). The compensation in the case of death of Dr. Sita Ram Aggarwal is increased accordingly.

14. In each case the tribunal also levied the interest at the rate of 8% p.a. in favour of the claimants. The exception taken by the appellant in both the appeals to levy of interest is unjustified and therefore repelled. Following the consistent view taken by this Court, the rate of interest in both the claim cases is increased to 9% per annum from the date of filing of the petition till realization. [see judgment dated 22.02.2016 in MAC.APP. 165/2011 *Oriental Insurance Co Ltd v. Sangeeta Devi & Ors*.]

15. By identical orders dated 24.01.2012 in both the appeals, the appellant had been directed to deposit the entire awarded amount with up-to-date interest with the Registrar General. In terms of orders dated 21.10.2013, sixty percent (60%) of the said amounts was permitted to be released to the claimants in both the appeals. Since the awards have been modified, the appellants shall be obliged to pay the

balance of their liability by requisite deposit with the tribunal within 30 days, making it available to be released to the claimants.

16. The statutory deposits shall be refunded to the appellant only after proof is shown of the awards having been satisfied.

17. Both appeals with pending applications are disposed of in above terms.

R.K.GAUBA, J.

NOVEMBER 09, 2017
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