$~R-182

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

***Decided on: 11th September, 2017***

\+ MAC.APP. 118/2010 and CM APPL.3680/2010 (stay)

COMMISSIONER OF POLICE & ANR. .... Appellants

Through: Nemo.

versus

SHANKER & ORS. ..... Respondents

Through: Nemo.

**CORAM:**

**HON'BLE MR. JUSTICE R.K.GAUBA**

**JUDGMENT (ORAL)**

1. Aakashi Devi, a widow, aged 50 years, died in a motor vehicular accident that took place on 14.11.2007 due to negligent driving of motor vehicle described as Tata 407 bearing registration No.DL-1LE-3947 of the appellants. Her two sons and married daughter, they being first to third respondents (collectively, the claimants) instituted accident claim case (Old Suit No.36/08 and New suit No.874/2008) on 14.01.2008. It appears that another person had died in the same accident and, thus, there was another claim case, both

being clubbed by the tribunal for inquiry, on the conclusion of which a common judgment was passed on 19.09.2009, accepting the cases to the effect that deaths had occurred due to negligent driving of the said vehicle by the fourth respondent (Desh Raj), employee of the appellants. In the case of death of Aakashi Devi, compensation in the total sum of Rs.9,71,000/- was awarded, which after deduction of the interim compensation of Rs. 50,000/-, was directed to be paid with interest by the appellants herein.

2. The appeal was filed primarily to question the calculation of compensation by the impugned judgment. It was admitted and directed to be put in the list of *'FINALS'* to be taken up on its own turn. However, no one has appeared for assistance on behalf of the appellants or the other side when the appeal is taken up for hearing.

3. On perusal, it is found that the tribunal did commit error in properly computing the calculation of compensation. Though it was claimed that the deceased was earning by working part time as a tea vendor, the evidence led in this regard was not credible. In the given facts and circumstances, the proper course for the tribunal was to go by the minimum wages (Rs.3516/-) payable to an unskilled worker during the relevant period rather than jumping to the conclusion that the deceased was earning Rs.6,000/- per month.

4. The calculation of compensation in such cases in terms of decision of a learned Single Judge of this Court in *Royal Sundaram Alliance Insurance Co. Ltd. vs. Master Manmeet Singh & Ors.*, ILR (2012) IV Delhi 547, and of this court in *Reliance General Insurance*

*Co Ltd versus Murgan & Ors,* Mac App.1177/2014, decided on 25.02.2016 would require the loss of dependency to be worked out by deducting one-third towards her personal and living expenses from said notional income and applying the multiplier as per her age, it being 13.

5. Thus the loss of dependency is calculated as (3513/- x 2/3 x 12 x 13) Rs.3,65,352/- rounded off to Rs.3,66,000/- (Rupees three lakhs sixty six thousands only).

6. It is noted that the tribunal had awarded Rs.5,000/- towards funeral expenses and Rs.30,000/- towards loss of love and affection. Thus it was deficient. Following the view taken in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshmamma* (2015) 9 SCC 150, compensation in the sum of Rs.1,00,000 on account of loss of love & affection and Rs.25,000/- each towards loss of estate and funeral expense are added. Thus, the total compensation payable in the case of death of Aakashi Devi is computed as (3,66,000/- + 1,00,000/- + 25,000/- + 25,000/-) to Rs.5,16,000/- (Rupees Five Lakh Sixteen Thousand only).

7. The award is reduced accordingly. Needless to add, it shall carry interest as levied by the tribunal.

8. By order dated 26.02.2010, the appellants had been directed to deposit Rs.3,50,000/- with interest with UCO Bank, Delhi High Court Branch. By subsequent order dated 22.07.2010, an amount of Rs.2,00,000 were released to respondent 1 to 3 in equal proportions from out of the said deposited amount and the balance kept in fixed

deposit. The remainder of the said deposit shall also now be released to the claimants.

9. The appellants will be obliged to deposit the balance of their liability in terms of the modified award which they must do by appropriate deposit with the tribunal within thirty days, making it available to be released to the claimants.

10. The statutory amount shall be refunded to the appellants after proof is shown of the award having been satisfied.

11. The appeal along with accompanying application stand disposed of in above terms.

**R.K.GAUBA, J.**

**SEPTEMBER 11, 2017**

**v**k