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

Date of Decision: 03rd March, 2016

+ **MAC.APP. 34/2014**

SHRIRAM GENERAL INSURANCE CO LTD Appellant

Through: Mr. P. Acharya & Mr. Sameer
Nandwani, Advs.

versus

RAJ KUMAR SHARMA & ORS Respondents

Through: Mr. D. P. Sharma, Adv. for R-1 & 2.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The insurance company has come up in appeal questioning the computation of compensation granted in the sum of ₹12,68,760/- with interest in favour of the first and second respondents by judgment dated 07.11.2013 on their petition under Sections 166 & 140 of the Motor Vehicles Act, 1988 (the MV Act), registered as suit no.183/2013 on account of death of Jagmohan Sharma in a motor vehicular accident on 25.01.2013 involving vehicle bearing registration no.DL-1LE-9118 (the offending vehicle) concededly insured with it against third party risk. In calculating the said amount of compensation, the tribunal assessed the income of the deceased notionally, in absence of better evidence, on the basis of minimum

wages of ₹9594/- payable to a graduate at the time of accident and added the component of future prospects of increase to the extent of fifty percent (50%) following the view taken by the Supreme Court in *Santosh Devi vs. National Insurance Co. Ltd.*, (2012) 4 Scale 559 and *Rajesh & Ors. vs. Rajbir Singh & Ors.*, (2013) 6 Scale 563.

2. The insurance company is aggrieved only on the ground that the future prospects should not have been added. *Per contra*, the claimant referred to *Sanobanu Nazirbhai Mirza & Ors. vs. Ahmedabad Municipal Transport Service*, (2013) 12 Scale 329, wherein a bench of two Hon'ble judges of Supreme Court have taken a view similar to the one in *Santosh Devi* (supra).

3. In the case reported as *Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121, Supreme Court, *inter-alia*, ruled that the element of future prospects of increase in income will not be granted in cases where the deceased was "self employed" or was working on a "fixed salary". Though this view was affirmed by a bench of three Hon'ble Judges in *Reshma Kumari & Ors. Vs. Madan Mohan & Anr.*, (2013) 9 SCC 65, on account of divergence of views, as arising from the ruling in *Rajesh & Ors. vs. Rajbir & Ors.*, (2013) 9 SCC 54, the issue was later referred to a larger bench, *inter-alia*, by order dated 02.07.2014 in *National Insurance Company Ltd. vs. Pushpa & Ors.*, (2015) 9 SCC166.

4. Against the above backdrop, by judgment dated 22.01.2016 passed in MAC Appeal No. 956/2012 (*Sunil Kumar v. Pyar Mohd.*), this Court has found it proper to follow the view taken earlier by a learned single judge in

MAC Appeal No. 189/2014 (*HDFC Ergo General Insurance Co. Ltd. v. Smt. Lalta Devi & Ors.*) decided on 12.1.2015, presently taking the decision in *Reshma Kumari (Supra)* as the binding precedent, till such time the law on the subject of future prospects for those who are “self-employed” or engaged in gainful employment at a “fixed salary” is clarified by a larger bench of the Supreme Court. This applies to the matter at hand because the claimant here has not led any evidence showing the income was subject to any periodic increase.

5. In above facts and circumstances, loss of dependency has to be recalculated without addition of the element of future prospects.

6. The deceased was 31 years old, and was a bachelor but the tribunal noted that the age of the mother was 45 years and on that basis it adopted multiplier of 14 and rightly so. Fifty percent (50%) needs to be deducted towards personal and living expenses [*Sarla Verma (supra)*]. Therefore, loss of monthly dependency comes to $(9594 \div 2)$ ₹4797/-. The total loss of dependency is calculated as $(4797 \times 12 \times 14)$ ₹8,05,896/-

7. It is, however, noted that the tribunal awarded only ₹25,000/- towards loss of love & affection and ₹10,000/- towards loss of estate, in addition to funeral expenses in the sum of ₹25,000/-. The award of non-pecuniary damages on account of loss of love & affection and loss of estate is on the lower side. Following the view taken by the Supreme Court in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 & *Shashikala V. Gangalakshamma* (2015) 9 SCC 150, the said non-pecuniary damages need to be increased to ₹1,00,000/- & ₹25,000/- respectively. Therefore, the

total compensation payable in the case comes to (8,05,896+1,00,000+25,000+25,000) ₹9,55,896/-, rounded off to ₹9,56,000/.

8. It is also noted that the tribunal has awarded only seven & half (7.5%) as interest. This is deficient. Following the consistent view taken by this court, the rate of interest is enhanced to nine percent (9%) 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.*).

9. The award is modified as above.

10. By order dated 15.01.2014, the insurance company had been directed to deposit the entire awarded amount with up-to-date interest with the Registrar General within five weeks thereof and out of such deposit eighty percent was allowed to be released. The Registrar General is now directed to recalculate the amount payable to the claimant in terms of award as modified above and release the same from out of the balance. Excess deposit shall, however, be refunded with statutory deposit, if made.

11. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

MARCH 03, 2016
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