$~2

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

Date of Decision: 02.05. 2016

\+ MAC.APP. 84/2013

NESAR AHMED AND ORS ..... Appellants
Through: Ms. Rupika Singh, Advocate

versus

VIGNESH KALRA AND ORS ..... Respondents
Through: Ms. Suman Bagga, Advocate for R-3

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

<u>JUDGMENT</u>

<u>R.K.GAUBA, J (ORAL):</u>

1. Noor Jahan, found by the Motor Accident Claims Tribunal (tribunal) upon inquiry, to be then 49 years old, died in a motor vehicular accident that occurred on 08.08.2011, involving a motor vehicle described as Motor Cycle no.DL13 SA 9861(offending vehicle), admittedly insured against third party risk with the third respondent (insurer) for the period in question. Her husband and three children (appellants / claimants) instituted an accident claim case (suit no.278/2011) in the wake of the detailed accident report (DAR) submitted on 13.09.2011 by the Station House Officer of police station Saket in the context of first information report (FIR) no.266/2011. The tribunal held inquiry and awarded compensation in the total amount of ₹9,12,000/- calculating it as under :-

1.	Loss of Dependency	₹8,67,000/-
2.	Loss of love and affection	₹25,000/-
3.	Funeral expenses	₹10,000/-
4.	Loss of Estate	₹10,000/-
	TOTAL	₹9,12,000/-

2. The insurer having admitted the liability to indemnify was directed to pay the above said amount to the claimants with interest at the rate of 9% p.a. from the date of filing of the DAR till realization.

3. During inquiry, K.R. Kalra (R1W1), the father of the first respondent (driver of the offending vehicle) had also appeared to prove that he had incurred medical expenses in the sum of ₹1,26,188/- for treatment of the deceased during her hospitalization after the injuries had been suffered which being to the benefit to the claimants, was also directed to be repaid to R1W1 by the insurance company.

4. The claimants, by appeal at hand, questioned the calculation of loss of dependency on the ground that future prospects were not factored in. Additionally, grievance is submitted about the inadequacy of the non-pecuniary damages and non award of any compensation towards loss of consortium.

5. 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 SCC 166.

6. 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.

7. It was claimed at the inquiry that the deceased was engaged in earning livelihood as a housemaid and by doing stitching work. In absence of any cogent proof, the tribunal opted to assess the income notionally on the basis of minimum wages, but did not add the element of future prospects, rightly so, because there was no proof of any progressive rise in the income from a regular engagement.

As pointed out by the counsel for the insurance company, there is no justification for minimum wages of a skilled worker to be adopted, since there is no proof that the deceased was equipped with any special skills so as to be treated in such category. Thus, the loss of dependency has to be calculated on the basis of minimum wages of an unskilled worker (₹6422). After deducting 1/4th towards personal and living expenses, the monthly loss of dependency comes to (₹6422 x 3/4) ₹4817/- and the total loss of dependency is computed (₹4817 x 12 x 13) at ₹7,51,452/- , rounded off to ₹7,52,000/-.

8. Following the view taken in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshmamma* (2015) 9 SCC 150, non-pecuniary damages in the sum of ₹1 Lakh each towards loss of love & affection and loss of consortium and ₹25,000/- each towards funeral expenses and loss of estate are added. Therefore, the total compensation payable in the case comes to (₹7,52,000/- + ₹2,50,000/-) ₹10,02,000/-.

9. The award in favour of the claimants is modified as above. Needless to add, it shall carry interest as levied by the tribunal.

10. It is directed that the entire enhanced portion of the compensation with proportionate interest shall fall to the share of the first appellant (husband) and shall be released to him in the form of a fixed deposit receipt for a period of 5 years.

11. The insurer is directed to satisfy the enhanced award by requisite deposit with the tribunal within 30 days of today.

12. The appeal is disposed of in the aforesaid terms.

R.K. GAUBA
(JUDGE)

MAY 02, 2016
yg