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

**Date of Decision: 31<sup>st</sup> March, 2016**

+ **MAC.APP. 1143/2011**

ROYAL SUNDARAM ALLIANCE INSURANCE CO LTD

..... Appellant

Through Ms. Suman Bagga and Mr. Pankaj  
Gupta, Advs.

versus

SANNO BEGUM & ORS

..... Respondent

Through Mr. O P Mainnie, Adv. for R-1 to 8

+ **MAC.APP. 39/2015**

SANNO BEGUM & ORS

..... Appellant

Through Mr. O P Mainnie, Adv.

versus

ROYAL SUNDARAM ALLIANCE INSURANCE CO LTD

..... Respondent

Through Ms. Suman Bagga and Mr. Pankaj  
Gupta, Advs.

**CORAM:**

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

**JUDGMENT**

**R.K.GAUBA, J (ORAL):**

1. Shahid Ali was travelling in motor vehicle which is described as van bearing registration No.DL 1LJ 8071 (the offending vehicle) which was

carrying certain goods, on 04.09.2011, it being driven at the relevant point of time by Praveen Kumar (ninth respondent in MAC.APP.No.1143/2011), it being admittedly owed by Bijender (tenth respondent in MAC.APP.No.1143/2011) and insured against third party risk for the period in question with the Royal Sundaram Alliance Insurance Co Ltd (appellant in MAC.APP.No.1143/2011). The said vehicle overturned in the area of police station Sadar Bazar, Delhi resulting in Shahid Ali being crushed to death. His widow and other dependent family members (eight in number) brought an accident claim case (suit No.446/2010) before the motor accident claims tribunal (tribunal) on 01.11.2010 impleading the driver, owner and insurer of offending vehicle as respondents. The said petition was allowed by judgment dated 05.09.2011 of the tribunal whereby compensation in the sum of Rs.12,41,000/- with interest at 7.5% was granted with direction to the insurer to satisfy the award under the indemnity clause. The said amount of compensation included Rs.12,16,051.20 calculated as loss of dependency besides Rs.10,000/- each on account of loss of consortium and loss of estate with Rs.5,000/- towards funeral expenses.

2. The insurance company had taken the plea that the deceased was travelling as a gratuitous passenger and, therefore, his risk was not covered. This contention was rejected with reference to the evidence, *inter alia*, of Vijay Kumar (PW2), manager of firm described as Maxwell stating that the deceased was travelling as labourer engaged by said firm with its goods on the vehicle in question.

3. The insurer by its appeal (MAC.APP.No.1143/2011) re-agitates the contention that the liability to indemnify could not have been fastened on it since the deceased was travelling as gratuitous passenger. Its plea must be

rejected for the evidence on record clearly shows that the deceased was travelling with the goods of his employer which had engaged the delivery van for such purposes. Noticeably, the evidence to the contrary led by the insurer through Punit Gupta (R3W1) is not based on any personal knowledge.

4. The next contention of the insurance company in its appeal is that the loss of dependency has been wrongly calculated with addition of 50% future prospects of increase over and above the income notionally assessed (Rs.5,278/-) on the basis of minimum wages. *Per contra*, the claimants argue that the non-pecuniary damages and the rate of interest levied are inadequate.

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. Lalita 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. In the facts and circumstances of the case, the loss of dependency has to be calculated without the element of future prospects being taken into account. Since the number of dependents was eight, reduction on account of personal and living expenses has to be to the extent of 1/5<sup>th</sup>. Consequently the monthly loss of dependency is worked out as  $(5,278 \times 4 \div 5)$  Rs.4,223/-. Since the deceased was 35 years old on the date of accident, the total loss of dependency is calculated as  $(4223 \times 12 \times 15)$  Rs.7,60,140/- rounded off to Rs.7,61,000/-.

8. Following the view taken in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshamma* (2015) 9 SCC 150, compensation in the sum of Rs.1 lakh each on account of loss of love & affection and loss of consortium and Rs.25,000/- each towards loss of estate and funeral expense are added. Thus the total compensation in this case comes to  $(7,61,000 + 2,50,000)$  Rs.10,11,000/-.

9. Following the consistent view taken by this Court [see judgment dated 22.02.2016 in MAC.APP. 165/2011 *Oriental Insurance Co Ltd v. Sangeeta Devi & Ors.*], the rate of interest is increased to 9% per annum from the date of filing of the petition till realization.

10. By order dated 23.12.2011, in MAC.APP.No.1143/2011, the insurance company had been directed to deposit the entire awarded amount with up-to-date interest with the Registrar General whereupon it was

directed to be kept in fixed deposit receipt. The Registrar General shall now calculate the amount payable to the claimants in terms of award modified as above and release the same forthwith to each of them refunding the excess, if any, to the insurance company with statutory deposit, if made. Conversely, if any further amount requires to be paid, the same shall be deposited with the tribunal within 30 days of today upon which the same shall also be released.

11. The appeals are disposed of in the above terms.

**MARCH 31, 2016**  
VLD

**R.K. GAUBA**  
**(JUDGE)**

