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

Date of Decision: 11.05.2016

+ **MAC.APP. 73/2014**

UNITED INDIA INS CO LTD

..... Appellant

Through: Mr. P. Acharya, Advocate

versus

RAKHI SHARMA & ORS

..... Respondents

Through: Mr. Sunil Kadian, Adv. for R-1 to 4

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Narender Kumar Sharma died on account of injuries suffered in a motor vehicular accident that occurred on 13.02.2011 due to negligent driving of a motor vehicle bearing registration no.HR-55 C-1516, which was admittedly insured against third party risk with the appellant insurance company (insurer). His dependent family members, first to fourth respondents (claimants), brought an accident claim case (MACT case no.96/12/11) on 21.04.2011 before the Motor Accident Claims Tribunal (tribunal) impleading the insurer, driver and owner of the offending vehicle as parties.

2. At the inquiry, it was proved that the death had occurred due to negligent driving of the offending vehicle. The said finding has since attained finality. By the same judgment, the tribunal awarded compensation in the total sum of Rs.20,25,630/- with interest at the rate of 7.5% in favour of the claimant directing the insurer to pay. The said amount includes ₹18,00,630/- calculated as dependency loss, with notional income of ₹7,410/-, equivalent to minimum wages of a matriculate, which was improved with addition of future prospects to the extent of 50% and after the deduction of 1/4th towards personal and living expenses, the multiplier of 18 was applied having regard to the age of the deceased at 22 years.

3. The insurer which has been burdened with the liability to pay, questioned the above calculation on the basis of addition of future prospects.

4. 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.

5. 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.

6. It is noted that no proof was adduced as to the avocation or regular income of the deceased. Therefore, the tribunal assumed the income on the basis of minimum wages. With no evidence having come on record as to the progressive rise in income, the dependency loss is as to be calculated without the element of future prospects. The dependency loss is, thus, recalculated as ($\text{₹}7,410 \times 3 / 4 \times 12 \times 18$) ₹12,00,420/- rounded off to ₹12,01,000. It is noted that while awarding non-pecuniary damages on account of loss of consortium, loss of care and guidance and cremation charges, the tribunal did not make any award under the conventional head of loss to estate which is added in the sum of ₹25,000/-. Therefore, the total compensation payable in the case comes to (₹12,01,000/- + ₹2,50,000/-) ₹14,51,000/-.

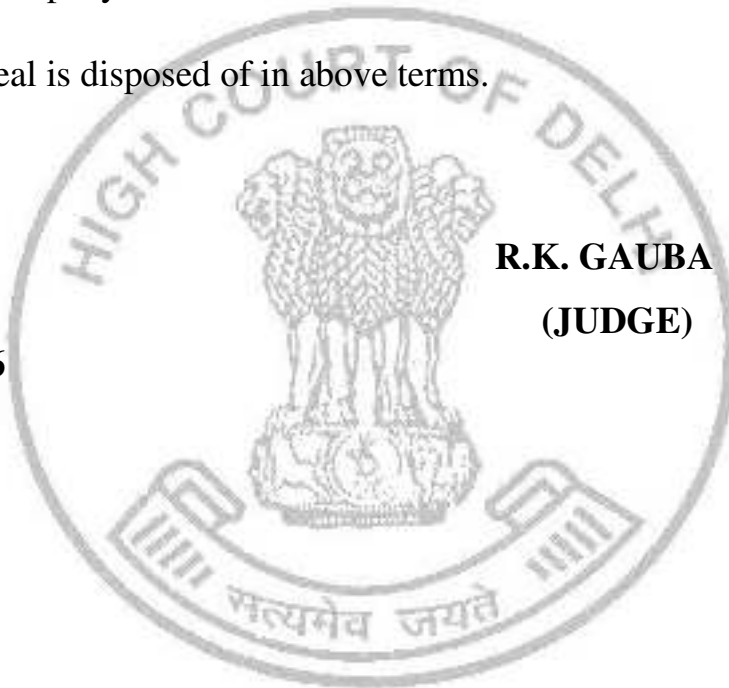
7. Following the consistent view taken by this court, the rate of interest is increased to 9% p.a. from the date of filing of the petition till realization. [see judgment dated 22.02.2016 in MAC.APP. 165/2011 *Oriental Insurance Co Ltd v. Sangeeta Devi & Ors.*].

8. The award is modified accordingly.

9. By order dated 24.01.2014, the insurance company had been directed to deposit the entire awarded amount with upto date interest whereupon 70% was allowed to be released, the balance kept in fixed deposit receipts with UCO Bank, Delhi High Court Branch, New Delhi for a period of six months to be renewed periodically. The Registrar General shall now calculate the amount payable under the modified award and release the balance from out of the deposit held refunding the excess with statutory deposit, if made, to the insurance company.

10. The appeal is disposed of in above terms.

MAY 11, 2016
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R.K. GAUBA
(JUDGE)