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

Date of Decision: 11th May, 2016

\+ **MAC.APP. 110/2013**

THE NEW INDIA ASSURANCE CO.LTD. ..... Appellant

Through: Mr. Shoumik Mazumdar & Mr. Pankaj Seth, Advs.

versus

SUKH SHYAM & ORS ..... Respondents

Through: Mr. S. N. Parashar, Adv. for R-1 to 4.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. On 20.07.2011, Krishna Devi, then aged 39 years, died as a result of injuries suffered in a motor vehicular accident involving negligent driving of truck bearing registration no.HR-74-0504 (the offending vehicle), admittedly insured against third party risk with the appellant/insurance company (the insurer) for the period in question. Her children (first to fourth respondents) instituted an accident claim case (case no.765/2011) seeking compensation under Sections 166 & 140 of the Motor Vehicles Act, 1988 (the MV Act). The tribunal held inquiry and, by judgment dated 23.11.2012, found that the claimants had proved that the accident and death had occurred due to negligent driving of the offending vehicle. The

13

compensation in the sum of ₹12,90,708/- was awarded with interest at the rate of seven & half percent (7.5%) per annum. The amount thus awarded includes ₹10,000/- each towards funeral expenses and loss to estate and ₹25,000/- towards loss of love & affection, besides ₹12,45,708/- calculated as loss of dependency.

2. By appeal at hand, the insurer submits that the negligence on the part of the driver of the offending vehicle was not properly proved as conclusions have been drawn mainly on the basis of records of corresponding criminal case. It is also submitted that the income of the deceased was assumed at ₹7098/- equivalent to minimum wages payable at the relevant point of time to a non-matriculate on which 30% was added towards future prospects which, in the submission of the insurer, was erroneous.

3. *Per contra*, the learned counsel for the claimants submitted that the awards under the non-pecuniary heads of damages and the rate of interest are inadequate.

4. Having heard the learned counsel on both sides and gone through the record, this court finds the argument on the plea of negligence to be frivolous. It is wrong to submit that the conclusions had been reached by the tribunal on the basis of the criminal court record. The son of the deceased (PW1) testified at the inquiry narrating the sequence of events. He was an eye witness to the occurrence and there is nothing in the cross-examination to doubt his veracity. Noticeably, no evidence in rebuttal was even offered.

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. Since the income was notionally assessed, the loss of dependency has to be calculated without the element of future prospects. Thus, it is recomputed as (7098x2/3x12x15) ₹8,51,760/-, rounded off to ₹8,52,000/-.

8. Following the view taken in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshmamma* (2015) 9 SCC 150,

the award of ₹1,00,000/- towards loss of love & affection and ₹25,000/- each towards loss of estate and funeral expense are added. Thus, the total compensation payable in the case comes to (8,52,000+ 1,50,000) ₹10,02,000/-.

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 08.02.2013, while insurance company was directed to deposit the entire awarded amount with up-to-date interest with UCO Bank, Delhi High Court Branch, New Delhi within the period specified, 60% was allowed to be released, the balance being kept in fixed deposit. The Registrar General shall now calculate the amount payable to the claimants under the modified award and release the balance, refunding the excess, if any, with statutory deposit, if made to the insurer.

11. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

MAY 11, 2016
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