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

Date of Decision: 02nd May, 2016

\+ **MAC.APP. 131/2013 & CM no. 2432/2013**

THE NEW INDIA ASSURANCE COMPANY LTD ..... Appellant

Through: Mr.Vinod Trisal, Adv.

versus

MANOKANIKA DUBE & ORS ..... Respondents

Through: Mr. Sudesh Kumar Goyal, Adv. for R-2 to 8.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Manish Kumar, then aged 20 years, died as a result of injuries suffered in a motor vehicular accident that occurred on 19.01.2009 involving negligent driving of truck bearing registration no.HR-38G-9387 (the offending vehicle), concededly insured against third party risk with the appellant/insurance company (the insurer) for the period in question. An accident claim case (case no.511/2009) was instituted on 17.03.2009 by first to eighth respondents (the claimants), they being the father and elder siblings of the deceased, he being a bachelor and his mother having pre-deceased. The first claimant (first respondent), the father of the deceased, died during the pendency of the inquiry before the tribunal. The tribunal, by judgment dated 31.10.2012, upheld the case of death having occurred due to

negligent driving of the offending vehicle and awarded compensation in the sum of ₹3,79,260/- with interest at the rate of nine percent (9%) per annum in favour of the claimants. The insurance cover having been admitted, the appellant was directed to satisfy the award.

2. The awarded compensation includes a sum of ₹3,34,260/- calculated as loss of dependency on the minimum wages of ₹4127/- on which 50% was added towards future prospects and after deduction of one half (1/2), multiplier of 9 was applied. The tribunal also added ₹10,000/- each towards funeral & miscellaneous expenses and loss of estate, besides ₹25,000/- towards loss of love & affection.

3. The insurer questions the computation of loss of dependency on the ground that the future prospects could not have been added. This submission, in facts and circumstances of the case, must be upheld.

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. 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.

6. Since there was no cogent proof of income of the deceased, the income was notionally assessed on the minimum wages. There being no proof of progressive rise, the loss of dependency has to be calculated without the element of future prospects.

7. After deduction of half (1/2) towards personal and living expenses, on the multiplier of 9, the loss of dependency is recalculated as (4127/2x12x9) ₹2,22,858, rounded off to ₹2,23,000/-.

8. Following the law laid down in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshmamma* (2015) 9 SCC 150, the awards of ₹1,00,000/- towards loss of love & affection and ₹25,000/- each towards funeral expenses and loss to estate are added. Thus, total compensation in the case comes to (2,23,000+1,50,000) ₹3,73,000/-.

9. The award is reduced accordingly. It shall carry interest as levied and shall be apportioned in the manner directed by the tribunal.

10. By order dated 11.02.2013, the insurance company was directed to deposit the entire awarded amount with up-to-date interest, with the Registrar General and out of said deposit 70% was allowed to be released, the balance kept in fixed deposit receipt with UCO Bank, Delhi High Court branch in the form of fixed deposit receipt in the account of respondent no.1 Manokanika Dube/claimant. The Registrar General shall calculate the amount payable to the claimants in terms of the award modified as above and release the balance to them refunding the excess in deposit with statutory deposit, if made, to the insurance company.

11. The appeal (with application) is disposed of in above terms.

R.K. GAUBA
(JUDGE)

MAY 02, 2016
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