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

Date of Decision: 3rd February, 2016

\+ **MAC.APP. 164/2004**

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

Through Mr. Pankaj Seth, Adv.

versus

RAVI CHANDER MAHAJAN ..... Respondent

Through None

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. This appeal by the insurance company against the award passed by the Motor Accident Claims Tribunal ("the Tribunal") on 06.01.2004 on claim petition of the first to third respondents (claimants) under Sections 166 and 140 of Motor Vehicles Act, 1988 ("MV Act"), registered as suit No.792/2003 seeking compensation on account of death of Asha Mahajan in motor vehicular accident that occurred on 02.12.1996 at about 6.30 AM on way from Goa to Bombay in bus bearing No.MH 12Q 913 ("the offending vehicle") primarily questioning the computation was dismissed by order dated 25.02.2008 of a learned Single Judge of this Court mainly on the ground that there was no permission taken in terms of Section 170 of MV Act. The insurance company had challenged the said order before Supreme Court. The Special Leave Petition (Civil) No.15699/2008 came up for consideration with a batch of similarly placed petitions and was allowed by order dated 19.10.2012, finding the dismissal of the appeal on

the said ground to be incorrect in view of the judgment of Supreme Court in *United India Insurance Co. Ltd. v. Shila Datta* (2011) 10 SCC 509.

2. Thus, the appeal was restored by order dated 11.12.2012 and fresh notices issued to the respondents. The respondents were duly served. The first to third respondents ("the claimants") appeared before the Registrar on 16.12.2014. The appeal was heard in part on 03.03.2015 and was directed to be re-notified as part-heard matter on 17.04.2015. Thereafter, the claimants appeared only once (17.04.2015) when the matter could not be taken up. They have failed to appear to assist on the last two consecutive dates and even today. Given the old pendency of this matter, there is no reason why the hearing on the appeal should be deferred yet again.

3. Arguments have been heard. The record perused. Since the challenge by the insurance company is to the computation of loss of dependency, the relevant portion of the impugned judgment of the Tribunal needs to be taken note of. It reads thus:

> *"Petitioner No.1 while deposing as PW-2 stated that the deceased was his wife, who died in a road side accident on 2.12.96 in Maharashtra. As per PW-2 at the time of her death deceased was aged about 46 years and was working as Civilian Staff Officer with Ministry of Defence Government of India at a salary of ₹12966/- per month. He proved on record as Ex.P1 and P2 the salary certificates of the deceased to that effect. As per Ex.P2, deceased would have retired at 13.4.2010 had she survived. Date of birth of deceased, as per office record was certified in Ex.P1 and P2 as 5.4.1950. PW-2 stated that the deceased left behind the petitioners as her only legal representatives. In cross-examination PW-2 denied the suggestion that Ex.P1 and P2 are fabricated documents, however, he admitted that in para 6 of claim petition total income of deceased was written as ₹11015/-.*

Respondents did not lead any evidence on the issue under consideration. Subsequently, petitioners filed a certificate dated 25.11.03 issued by Deputy Director Department of Administrative Naval Head Quarters, New Delhi to the effect certifying salary payable to the deceased till the time of her retirement on the basis of various increments and promotions as due to her. As per the said certificate, at the time of her death deceased was drawing ₹12,275/- as basic pay besides D.A., C.C.A. and M.R.A. as per Government rules and at the time of her retirement on 30.4.2010, had she survived deceased would have drawn basic pay of ₹15,850/-. Petitioner no.1 also filed his affidavit dated 10.12.03 describing the total salary payable to deceased w.e.f. 1.2.97 till the time of her retirement. As per the same w.e.f. 1.2.97 the deceased would have been drawing a total salary of ₹24114/- and at that time of her retirement as on 30.4.2010 ₹30,256/-.

As per settled law at the stage of computation, the Tribunal has to keep in mind the future promotional prospects of the deceased also. Accordingly, mean income of the deceased is taken as (₹24,114 ÷ 30,256) ÷ 2 = 27,185/-. Deducting a sum of ₹9061/- towards 1/3rd personal expenses of deceased from the mean salary we reach the figure of ₹18,124/- which represents the monthly dependency of petitioners. In view of 46 years of age of the deceased, as proved by way of Ex.P1 and P2 appropriate multiplier applicable in this case would be 13 and loss of income suffered by petitioners comes to ₹18,124/- x 12 x 13 = ₹28,27,344/- and I award the same to the petitioners. Towards loss of consortium I award to petitioners a sum of ₹20,000/- and towards funeral expenses I award a sum of ₹15,000/-. In all I award to the petitioners a sum of ₹28,62,344/- (₹Twenty Eight Lakh Sixty Two Thousand Three Hundred and Forty Four only) towards compensation on account of death of Smt. Asha Mahajan in road side accident."

4. Even a bare perusal of the reasoning applied by the Tribunal, as quoted above, shows that the approach was wholly erroneous. In *Sarla*

Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr., (2009) 6 SCC 121, which was affirmed later by a bench of three Hon'ble Judges in *Reshma Kumari V. Madan Mohan* (2013) 9 SCC 65, it was held that pay revisions in future cannot be factored in and the compensation needs to be adjudicated upon only with reference to the pay receivable at the time of death. The observations of the Supreme Court in paragraphs 45 and 46 of the judgment in *Sarla Verma* (supra) only need to be quoted:

> *"45. The assumption of the appellants that the actual future pay revisions should be taken into account for the purpose of calculating the income is not sound. As against the contention of the appellants that if the deceased had been alive, he would have earned the benefit of revised pay scales, it is equally possible that if he had not died in the accident, he might have died on account of ill health or other accident, or lost the employment or met some other calamity or disadvantage. The imponderables in life are too many. Another significant aspect is the non-existence of such evidence at the time of accident.*
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> *46. In this case, the accident and death occurred in the year 1988. The award was made by the Tribunal in the year 1993. The High Court decided the appeal in 2007. The pendency of the claim proceedings and appeal for nearly two decades is a fortuitous circumstance and that will not entitle the appellants to rely upon the two pay revisions which took place in the course of the said two decades. If the claim petition filed in 1988 had been disposed of in the year 1988-89 itself and if the appeal had been decided by the High Court in the year 1989-90, then obviously the compensation would have been decided only with reference to the scale of pay applicable at the time of death and not with reference to any future revision in pay scales."*

5. Though in the pleadings the claimants had mentioned the salary of the deceased at 11,015/- per month, it was not enquired even at the instance of the appellant insurance company as to what was the basis of

the said assertion. A pleading wrongly made will not bind the claimants particularly against the authentic official proof adduced about the income of the deceased at the inquiry. The learned counsel for the appellant himself referred to Ex.P1, a certificate dated 05.04.1999 showing that the deceased Asha Mahajan was working as civilian staff officer in Indian Navy and her basic pay at the time of death was ₹12,275**/-** per month. Further, the document Ex.P2 dated 20.07.1999 shows that on the basis of the said basic pay, she was entitled to dearness allowance in the sum of ₹491/- per month and city compensatory allowance at ₹300/- per month. Thus, the claimants had proved that the deceased was in receipt of salary to the tune of ₹13,066/- per month.

6. Since the Tribunal computed the last drawn salary on entirely wrong basis, adding the element of future prospects, with reference to the future revision in pay, the loss of dependency needs to be recalculated.

7. Having regard to the dicta in *Sarla Verma* (supra), the element of future prospects of 30% would need to be added, this having regard to the age (46 years) of the deceased at the relevant point of time. Thus, the income of the deceased for purpose of computation will have to be taken as 16,986/- per month. Since the family members dependent upon her were three in number, 1/3rd would need to be deducted on account of personal and living expenses. The monthly loss of dependency is thus calculated as (16,986 x 2/3) ₹11,324/-. The Tribunal correctly applied the multiplier of 13 and, therefore, the loss of dependency may be calculated at (11324 x 12 x 13) ₹17,66,544/-.

8. It is noted, however, that the award by the Tribunal on account of non-pecuniary damages was inadequate inasmuch as only ₹ 20,000/- was granted for loss of consortium and ₹15,000/- on account of funeral

expenses, there being no award on account of loss of love and affection for children or loss of estate.

9. Having regard to the facts and circumstances of the case, including the date of death, in the considered opinion of this court, award of ₹50,000/- on account of loss of consortium, ₹50,000/- on account of loss of love and affection for children, ₹15,000/- for funeral expenses and ₹10,000/- for loss of estate seems just and proper and, thus, granted. This would make an addition of ₹1,25,000/-, raising the compensation awardable in the case to ₹18,91,544/- rounded off to ₹18,92,000/-. Needless to add that the award shall carry interest as levied in the impugned judgment.

10. The award is modified as above.

11. The learned counsel for the appellant insurance company submitted that since the appeal was dismissed by order dated 25.02.2008 and no interim protection was granted, it was constrained to satisfy the award as granted by the Tribunal. As a result of modification, the claimants are bound to refund the excess received. The appellant is given the liberty to recover the excess payment from the claimants by appropriate proceedings before the tribunal, in proportion of their respective shares.

12. The appeal is disposed of in above terms.

13. Statutory deposit, if made, shall be refunded.

R.K. GAUBA
(JUDGE)

FEBRUARY 03, 2016
VLD