

\$~18

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

Date of Decision: 19th April, 2016

+ **MAC.APP. 121/2014**

NEW INDIA ASSURANCE CO. LTD.

..... Appellants

Through: Mr. Ravinder Singh & Ms. Raveesha
Gupta, Advs.

versus

VIDYA RANI & ORS

..... Respondents

Through: Ms. Aishwarya Satija, Adv.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Parmanand Yadav, a 48 years old person, died in a motor vehicular accident that occurred on 21.07.2006 about 8 p.m. when the two wheeler scooter bearing registration No. DBJ 5367 (the scooter) driven by him was involved in a collision with Maruti Car bearing No. BR 1F 3337 (the offending vehicle), admittedly insured against third party risk for the period in question with the appellant insurance company (insurer). His widow and children filed accident claim case (MACT No. 85/2007) on 24.01.2007 seeking compensation, impleading the insurer as the party respondent in addition to motor vehicle involved in the offending vehicle.

2. The tribunal held inquiry and, by judgment dated 26.11.2013, upheld the case of the claimants (first to third respondents herein) about accident

having been caused due to rash driving of the car. The claimants had pleaded before the tribunal that the deceased was employed in a private service with Bhagwati Poly Plast, Wazirpur, Delhi and sought to prove the said contention by Sanjay Yadav (PW-3) proprietor of the said concern. Though PW-3 deposed about the engagement of the deceased as a salesman, in absence of any records relating to such employment, the tribunal was not satisfied and, therefore, proceeded to assess the loss of dependency on the basis of minimum wages of an unskilled worker (Rs. 3,271). In computing compensation, it added the element of future prospects and, thus, calculated the loss of dependency at Rs. 4,42,260/- and added Rs. 1 lakh towards loss of consortium, Rs. 25,000/- each towards loss of love & affection and funeral expenses and Rs. 10,000/- towards loss of estate and, thus, awarded total compensation to Rs. 6,02,260/- with interest @ 7.5 % per annum from the date of filing of the petition calling upon the insurer to pay.

3. The insurer has come up in appeal questioning the loss of dependency contending that the element of future prospects could not have been added.

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. Since the income was assessed notionally, the element of future prospects will have to be kept aside and there being no evidence of any progressive rise in income, the element of future prospects will have to be kept aside.

7. Keeping in view the number of dependents (3), $1/3^{\text{rd}}$ is deducted towards personal & living expenses and having regard to the age (48 years), the multiplier of 13 is to be applied.

8. In above view, the total loss of dependency is worked out at $(3,271 \times 2 \div 3 \times 12 \times 13)$ Rs. 3,40,184/-, rounded off to Rs. 3,41,000/-.

9. 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 payable in the case is computed as $(3,41,000 + 2,50,000)$ Rs. 5,91,000/-.

10. 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.

11. The tribunal had apportioned Rs. 1 lakh to the second claimant (second respondent) and Rs. 50,000/- to the third claimant (third respondent) and the balance to the widow first claimant (first respondent). Since the award has been reduced, the share of the widow in the principal amount shall stand reduced accordingly. However, the amount payable on account of increase in the rate of interest in entirety shall go to her.

12. The award is modified as above.

13. The insurance company had been directed by order dated 05.02.2014 to deposit the awarded compensation with upto date interest with the Registrar General within the period specified and out of the same 70% was released. The Registrar General shall now calculate the sums payable to the claimants and release the same with proportionate interest in their favour in terms of the aforementioned direction, refunding the excess, if any, with statutory deposit, if made, to the insurer. Conversely, if more amount is required to be paid, the insurer shall be obliged to deposit the same with the tribunal within 30 days of this judgment whereupon it shall be released with interest accordingly.

14. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

APRIL 19, 2016/nk