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

Date of Decision: 29th January, 2016

+ **MAC.APP. 89/2016 & CM Nos. 3173/2016 (exemption),
3174/2016 (delay)**

BEENA SHARMA & ORS

..... Appellants

Through: Mr. Shekhar Aggarwal & Mr.
Suresh Kumar, Advs.

versus

**YUSUF KHAN & ORS (UNITED INDIA INSURANCE CO
LTD)**

..... Respondents

Through: Mr. P. Acharya, Adv. for R-3.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The appellants are aggrieved with the compensation awarded by the motor accident claims tribunal ("the tribunal") by judgment dated 05.10.2015 on account of death of Vipul Sharma in motor vehicular accident that occurred on 19.09.2013. The appellants include mother, father and younger brother of the deceased. The grievances are three fold; namely, that future prospects have not been considered, the deduction on account of personal and living expenses is higher than what should have been featured in, in the face of the fact that dependents are more than two, and that multiplier has been wrongly adopted going by the age of the mother rather than that of the deceased.

2. Having heard the learned counsel for appellants, this court finds the appeal lacks substance on all three counts.

3. It is clear from (the para 15 of) the impugned judgment that no formal proof of the regular income of the deceased with possibility of periodic or future increase in the income was adduced. In the name of proof what was submitted was a no objection certificate of M/s M. S. Electronics. The document would not spell out the salary earned from the said firm. In these circumstances, learned tribunal went by, and rightly so, the minimum wages payable to a skilled worker in Delhi during the relevant period.

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 SCC166.

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. This applies to the matter at hand because the claimant here pleaded about gainful employment at a fixed salary and has not led any evidence showing the salary was subject to any periodic increase.

6. As regards the deduction on account of personal and living expenses, since the prime claim is on behalf of the parents, the deceased being a bachelor, the dicta in *Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121 would apply and the deduction to the extent of 50 % on account of personal expenses has been rightly factored in.

7. On the multiplier, this court finds nothing wrong in the approach taken by the tribunal. It is well settled that in case of claim of compensation on account of death, multiplier is to be adopted as per the age of the deceased or the claimant whichever is higher (*General Manager, Kerala State Road Transport Corporation, Trivandrum vs. Mrs. Susamma Thomas & Ors.*, (1994) 2 SCC 176).

8. Thus, appeal lacks merits and is accordingly dismissed in *limine*.

**R.K. GAUBA
(JUDGE)**

JANUARY 29, 2016/ssc