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

Date of Decision: 18th March, 2016

\+ **MAC.APP. 166/2013**

NEW INDIA ASSURANCE CO. LTD. ..... Appellant
Through: Mr. P Acharya, Adv.

versus

ROY GITA & 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 the claim petition under sections 166 and 140 of Motor Vehicles Act, 1988 (M V Act) presented by the first to fourth respondents herein (collectively, the claimants), registered as MACP No.408/11, the motor accidents claims tribunal (Tribunal), by order dated 21-12-2012, granted compensation in the sum of Rs.10,81,942/- with interest at 7.5% per annum from the date of filing of petition (14-10-2011) till realization on account of death of Roy Gopal in a vehicular accident that occurred at 6.30 PM on 28-08-2011 involving truck bearing no.UP 14 AT 2832 (the offending vehicle) which was admittedly insured against third party risk with the appellant insurance company (Insurer), after holding its driver and owner to be jointly and severally liable.

2. The Tribunal calculated the compensation thus :-

1. Loss of dependency {(Rs.6422/- + 30%) x 12 x 14 -25%}	*: Rs.10,51,923.60*
2. Compensation for Loss of consortium (as petitioner no. 1 is wife of deceased)	*:Rs. 10,000.00*
3. Compensation for loss of love and affection (as petitioner no.2 to 4 are children of deceased)	*: Rs. 10,000.00*
4. Compensation for loss of estate	*: Rs. 5,000.00*
5. Funeral Expenses (there is no proof of Rs.30,000/- having been spent on transportation and last rites of deceased)	*: Rs. 50.000.00*
	Rs.10.81,923.60
Rounded to	*Rs.10,81,924.00*

3. As pointed out by the learned counsel for the claimants, the amount of Rs.50,000/- mentioned against Item No.5 above (financial expenses) was typographical error as the total compensation indicates the said amount was treated to be only Rs.5,000/-.

4. The solitary ground on which the appeal has been filed is that the element of future prospects to the extent of 30% was wrongly added to calculate the loss of dependency.

5. The tribunal noted in the impugned judgment that the deceased was illiterate. The claimants had not been able to prove the nature of occupation or business in which he was engaged or the income that was accruing to

him. In these circumstances, the tribunal took Rs.6,422/- per month as the benchmark, it being the amount of minimum wages payable to an unskilled worker at the relevant point of time.

6. 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.

7. 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 has not led any evidence showing the income was subject to any periodic increase.

8. The contention of the insurance company that future prospects could not be added thus must be accepted. In these circumstances, the loss of dependency has to be recomputed. Since the dependent family members were four in number, 1/4th is to be deducted towards personal and living expenses. This means the monthly loss of dependency comes to (6,422 x 3 ÷ 4) Rs.4,817/-. On the multiplier of 14 (the deceased was 45 years old), the total loss of dependency is computed as (4,817 x 12 x 14) Rs.8,09,256/-.

9. But, as pointed out by the counsel for the claimants, the award under the non-pecuniary heads of damages is inadequate. Following the view taken in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshmamma* (2015) 9 SCC 150, the compensation in the sum of Rs.1,00,000/- each for loss of consortium and loss of love and affection, Rs.25,000/- each towards loss of estate and funeral expenses are required to be added.

10. Thus, the total compensation payable in the case comes to (8,09,256+2,50,000) Rs.10,59,256/-. It is further pointed out by the learned counsel for the claimants that the rate of interest is on the lower side. 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 petition till realization. The award is modified accordingly.

11. By order dated 19.02.2013, the insurance company had been called upon to deposit the entire awarded amount with up-to-date interest with UCO Bank and out of the said deposit, 60% was allowed to be released to the claimants. The Registrar General shall now recompute the amount

payable to the claimants and release the same from out of the deposit thus made. If the deposit is in excess, it shall be refunded to the insurance company with statutory deposit, if made. Conversely, if the amount deposited is found to be deficient, the insurance company shall deposit the balance with the tribunal within 30 days which shall also to be released.

12. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

MARCH 18, 2016/VLD