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

Date of Decision: 31st March, 2016

\+ **MAC.APP. 160/2012**

NEW INDIA ASSURANCE CO LTD ..... Appellant
Through Mr. P Acharya, Adv. for Mr. K L Nandwani, Adv.

versus

KAMLESH SONI & ORS ..... Respondent
Through None

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Sandeep Soni, a bachelor, aged 29 years, died as a result of injuries suffered in a motor vehicular accident that occurred at about 6.50 AM on 25.03.2009 involving motor vehicle described as dumper bearing registration No.HR 38 E-5676 which was admittedly insured against third party risk with the appellant insurance-company (insurer). His mother (a widow) brought an accident claim case under Sections 166 and 140 of Motor Vehicles Act (MV Act) on 01.06.2009 before the motor accident claims tribunal (tribunal) where it was registered, *inter alia*, on the basis of accident information report (AIR) as case No.676/2009.

2. The insurer along with the driver and the owner of the offending vehicle were impleaded as party respondents. By judgment dated 05.11.2011, the tribunal awarded compensation in the sum of Rs.5,38,573/- with interest at 7.5% per annum from the date of filing of the petition till realization in favour of the claimant (first respondent). The said award included Rs.1,30,000/- towards non-pecuniary heads of damages and Rs.4,08,573/- towards loss of dependency.

3. The insurer by appeal at hand raises two contentions. The first contention is that there was no evidence led about the negligence or involvement of the offending vehicle in the accident. The second contention concerns the calculation of loss of dependency on the basis of addition of future prospects.

4. Whilst it is true that in the discussion against issue No.1 in the impugned judgment, the tribunal seems to have indicated that the negligence and involvement of the offending vehicle was sought to be proved on the basis of record of corresponding criminal case, the fact remains that the claimant had examined Ajay Soni (PW3) brother of the deceased on the strength of his affidavit (Ex.PW3/A). PW3 was an eye witness to the occurrence and narrated the sequence of events, also proving the negligence on the part of the truck driver. The said evidence has gone unrebutted and unchallenged. In these circumstances, there is no reason for the finding returned by the tribunal to be interfered with.

5. The claimant was unable to muster any clear evidence as to the employment or earnings of the deceased. Therefore, the tribunal assumed the notional income of Rs.4,127/- as minimum wages paid to a non-matriculate and to this future prospects were added to calculate the loss of dependency.

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.

8. The loss of dependency has to be worked out without the element of future prospects. The deceased was a bachelor. Therefore, 50% is deducted towards personal & living expenses and thus, the loss of dependency is calculated as (4,127 ÷ 2 x 12 x 11) Rs.2,72,382/- rounded off to Rs.2,73,000/-. Adding the non-pecuniary damages, the total compensation in the case comes to (2,73,000 + 1,30,000) Rs.4,03,000/-.

9. 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.

10. The award is modified accordingly.

11. By order dated 13.02.2012, the insurer had been directed to deposit the entire awarded amount with up-to-date interest with the Registrar General whereupon such deposit was allowed to be kept in fixed deposit in UCO Bank, Delhi High Court branch for a period of one year to be renewed from time to time. By order dated 17.04.2013, 50% of the deposited amount was allowed to be released to the claimant.

12. The Registrar General shall now calculate the sums payable to the claimant and release the same with proportionate interest in her favour in terms of the aforementioned directions, refunding the excess, if any, with statutory deposit to the insurer. Conversely, if more amount is required to be paid, the insurer shall be directed to deposit the same with the tribunal within 30 days of this judgment whereupon it shall be released with interest accordingly.

13. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

MARCH 31, 2016
VLD