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

Date of Decision: 13th May, 2016

+ **MAC.APP. 124/2014**

SEEMA & ORS

..... Appellants

Through: Ms. Neha Singh, Adv. proxy counsel
for Mr. H. S. Gautam, Adv.

versus

JASBIR & ORS

..... Respondents

Through: Mr. Rajat Brar, Adv. for R-3.

AND

+ **MAC.APP. 108/2015 with CM nos.1730/2015, 1731/2015,
14549/2015 & 14551/2015**

NIRMLA DEVI

..... Appellant

Through: Ms. Neha Singh, Adv. proxy counsel
for Mr. H. S. Gautam, Adv.

versus

JASBIR & ORS (BAJAJ ALLIANZ GENERAL INSURANCE CO.
LTD.)

..... Respondents

Through: Mr. Rajat Brar, Adv. for R-3.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. On 31.05.2008, Som Dutt was traveling with certain others in a Maruti car bearing registration no.HR-13A-6456 and at about 00:30 hours in

the area of village Badli, within the jurisdiction of police station Bahadur Garh (Haryana), it met with an accident involving half body truck bearing registration no.HR-63-3145 (the offending vehicle). As a result of injuries suffered, Som Dutt died. His wife and other dependent family members (the appellants in MAC Appeal no.124/2014) instituted an accident claim case (MACP no.986/2008) on 25.07.2008 before the motor accident claims tribunal (the tribunal) seeking compensation under Sections 166 & 140 of the Motor Vehicles Act, 1988 (the MV Act) impleading the driver (Jasbir), the owner (Virender Singh), *superdar* (Nirmla Devi) and the insurer (Bajaj Allianz General Insurance Co. Ltd.) as parties, on the averments that the accident had occurred due to negligence on the part of the driver of the offending vehicle. The tribunal clubbed the said case with two other similarly placed accident claim cases brought by Shiv Narayan and Devender Kumar who had also suffered injuries in the same accident, and held inquiry. By judgment dated 17.08.2013, the tribunal returned a finding upholding the case of the claimant that death of Som Dutt had occurred due to negligent driving of the offending vehicle by its driver. It awarded compensation in the sum of ₹23,00,500/- with interest at the rate of 7.5% per annum from the date of filing of the petition, calculating it thus:-

Loss of dependency (10,125x17x12)	:₹20,65,500/-
Loss of love and affection	:₹1,00,000/-
For funeral expenses	:₹ 25,000/-
Loss of estate	:₹ 10,000/-
Loss of consortium	:₹1,00,000/-
Total	:₹23,00,500/-

2. The tribunal found that Virender Singh, the registered owner of the truck had died on 30.10.2006. The ownership of truck, thus, had devolved upon his legal heirs including his widow Nirmla Devi (appellant in MAC appeal no.108/2015). It was conceded before the tribunal that, after the accident, Nirmala Devi had taken the offending vehicle on *superdagi* from the concerned authority, she being the person in control of the vehicle. The insurance company (third respondent in MAC appeal no.124/2014 and second respondent in MAC appeal no.108/2015) conceded before the tribunal that an insurance policy had been issued respecting the offending vehicle (vide Ex.R4W1/3) for the period 26.05.2008 to 25.05.2009 which would cover the date of accident that had given rise to the cause of action for the claim petition. It, however, submitted that the *factum* of death of registered owner of the offending vehicle (Virender Singh) on 30.10.2006 had been withheld and the insurance policy thus was void in terms of the Section 149 (2) (b) of the MV Act, material information having been suppressed and not disclosed. It also submitted that inspite of notice (Ex.R4W1/1) sent by registered post (vide postal receipts Ex.R4W1/2) under Order 12 Rule-8 of the Code of Civil Procedure, 1908 (CPC), as proved through Kirti Sobti (R4W1) senior executive (legal) the driver and owner of the offending vehicle had failed to respond or explain the suppression of the material particulars concerning the death of registered owner. The contentions that the insurance policy was void and the permit of the offending vehicle (also in the name of dead person) was not valid were accepted and the insurance company though directed to satisfy the award was held entitled to recovery rights.

3. The claimants have come up with appeal (MAC appeal no.124/2014) pleading that the loss of dependency has not been properly computed as inspite of the evidence being led through the deposition of first claimant (PW4), the tribunal rejected their case that the deceased was earning ₹20,000/- per month and his income was assumed in the meager sum of ₹10,000/- per month only. It is also the grievance that the award under non-pecuniary heads of loss of love & affection is inadequate. *Per contra*, the counsel for the insurer submitted that since the deceased was admittedly a self-employed person the addition of future prospects of increase to the extent of 50% was inappropriate. By her appeal (MAC appeal no.108/2015), Nirmala Devi (concededly the owner of the offending vehicle she being the legal heir of the registered owner who had died earlier) questions the grant of recovery rights against above-noted background facts. At the hearing, however, no one has appeared on behalf of appellant Nirmla Devi (in MAC appeal no.108/2015) to assist.

4. The arguments of the learned counsel for other party have been heard and record perused.

5. There is merit in the grievance of the claimants in their appeal that the evidence as adduced to prove the income of deceased was not properly appreciated. It is noted that in the pleadings the claimant had submitted that the deceased was earning ₹20,000/- per month from a motor repair workshop. PW4, by her evidence, adduced through her affidavit (Ex.PW4/1) and further documents including rent agreement (Ex.PW3/G) and rent receipts (Ex.PW3/H1 to H5), proved that the deceased was running a motor repair workshop from premises taken on rent at ₹10,000/- per month. Her

evidence shows that the deceased was a technician with vast experience, he having worked in automobile workshops in the past, in which regard her word is supported by Vishwajit Ganguly (PW8), also showing that he was assisted by a number of other workers in the said business. Given the testimony of the said witnesses, the tribunal initially reached a conclusion that he would have been earning ₹25,000/- per month but then proceeded to deduct ₹10,000/- as rent, besides ₹5,000/- towards office expenses. It is inconceivable that a person who was paying rent of ₹10,000/- per month for the business and having employed a number of workers to assist him would be earning only ₹10,000/- per month. Against such backdrop, the evidence of the claimants, in the opinion of this court, should have been accepted and finding that the income as pleaded had been proved should have been returned. Necessary correction needs to be carried out now.

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 SCC 166.

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. 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.

8. Though the tribunal has added the element of future prospects of increase, given the fact that the deceased was a self-employed person, the said element cannot be factored in. Thus, loss of dependency has to be worked out on the income of ₹20,000/- per month. The number of dependants being six, one-fourth has to be deducted towards personal and living expenses. Since the age of the deceased was 29 years, the multiplier of 17 would apply.

9. In these circumstances, loss of dependency is computed as $(20,000 \times 3/4 \times 12 \times 17)$ ₹30,60,000/-. The non-pecuniary damages awarded by the tribunal are generally in accord with the view taken in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshamma* (2015) 9 SCC 150. However, the amount of ₹10,000/- for loss to estate is on the lower side. It is, therefore, increased to ₹25,000/-. Thus, total compensation in the case is computed as $(30,60,000 + 2,50,000)$ ₹33,10,000/-.

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. Coming to the contention of Nirmla Devi in her appeal (MAC appeal no.108/2015), her plea that the *factum* of death of Virender Singh had been disclosed to the insurance company *per se* cannot be believed. Admittedly, Virender Singh died on 30.10.2006. Under Section 50(2) & (3) of the MV Act, the appellant was obliged to take necessary steps to get the registration of the vehicle transferred in her name within the period prescribed. During the lifetime of Virender Singh the vehicle may have been put on the road under a valid permit. With the holder of the permit having died, however, the person succeeding to the ownership and possession of the vehicle was obliged by Section 82(2) of the MV Act to take necessary steps to get the said permit transferred in her name, again within the period prescribed. No such steps were concededly taken. The plea that the appellant was unable to take the requisite steps because she was not able to clear the amount due under hire-purchase agreement cannot be a good defence. As noted by the tribunal in the impugned judgment, it is not even shown by any evidence that the loan under which the vehicle was purchased was still outstanding. Be that as it may, the fact remains that the insurance policy was taken out in the name of a dead person. This apparently amounts to non disclosure of a material fact rendering the insurance policy void.

12. Thus, the appeal of Nirmla Devi (MAC appeal no.108/2015) is found to be devoid of merits and liable to be dismissed.

13. The insurance company is directed to deposit the amount under modified award with effect of increased rate of interest with the tribunal

within 30 days of this judgment making it available for being released to the claimants. It is directed that entire enhanced portion of the award including the amount payable under the increased interest shall fall to the share of the first claimant Seema (widow) alone. Upon deposit being made, the tribunal shall release the same to the claimant in terms of these directions. Needless to add, the right to recover the amount paid as compensation, granted to the insurer shall also inure in respect of the enhanced liability.

14. Both the appeals are disposed of in above terms.

MAY 13, 2016
ssc

R.K. GAUBA
(JUDGE)

