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

Date of Decision: 16th May, 2016

\+ MAC.APP. 167/2014

SHRIRAM GENERAL INSURANCE CO LTD ..... Appellant

Through: Mr. P. Acharya, Advocate

versus

RESHMA & ORS ..... Respondents

Through: Mr. R.K. Bachchan, Adv. for R-3 & 4

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Yaseen Dula Khan @ Yaseen, aged 37 years, died in a motor vehicular accident that had occurred on 13.08.2010 involving negligent driving of a motor vehicle bearing registration no.UP17B-3286 (offending vehicle) concededly insured against third party risk with the appellant insurance company (insurer) for the period in question. His widow and child instituted accident claim case (MAC petition no.243/2010 on 18.08.2010) seeking compensation under Sections 166 and 140 of the Motor Vehicles Act, 1988 (M.V. Act), impleading amongst others, the parents of the deceased, in addition to the insurer, driver and owner of the offending

vehicle as parties. The tribunal upheld the case about negligent driving of the offending vehicle having led to the death and, by judgment dated 06.12.2013, awarded compensation in the sum of Rs.10,76,235/- with interest at the rate of 7.5% p.a. from the date of filing of the petition till realization, directing the insurer to pay.

2. By the appeal at hand, the insurer questions the calculation of loss of dependency on the ground that the element of future prospects to the extent of 30% was wrongly added over and above the income of the deceased notionally assessed at Rs.5278/- p.m., it being the minimum wages.

3. *Per contra*, the counsel for the claimants points out that the awards of Rs.50,000/- each towards loss of love and affection and loss of consortium and interest at the rate of 7.5% p.a. are inadequate.

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. 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.

6. Since no clear evidence was mustered showing regular employment or progressive rise in income, the loss of dependency is recomputed without the element of future prospects on multiplier of 15, after deduction of 1/4th towards personal and living expenses as (5278 x 3 /4 x 12 x 15) Rs.7,12,530/-, rounded off to Rs.7,13,000/-.

7. Following the view taken in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshmamma* (2015) 9 SCC 150, awards under the heads of loss of love and affection and loss of consortium are increased to Rs.1 Lakh each. Adding the award of Rs.25,000/- each towards loss of estate and funeral expenses, the total compensation in the case comes to (₹ 7,13,000/- + ₹2,50,000/-) ₹ 9,63,000/-.

8. 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.

9. The award is modified accordingly.

10. By order dated 19.02.2014, the insurance company had been directed to deposit the entire awarded amount with upto date interest with the Registrar General within the period specified and out of such deposit ninety percent (90%) was allowed to be released to the claimants in terms of the impugned judgment, the balance having been kept in fixed deposit in the UCO Bank, Delhi High Court Branch, New Delhi, initially for a period of one year with provision for periodical renewal.

11. The Registrar General shall now calculate the balance 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 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.

12. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

MAY 16, 2016
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