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

Date of Decision: 12th May, 2016

+ **MAC.APP. 111/2015**

SHRIRAM GENERAL INSURANCE CO LTD Appellant

Through: Ms. Meenakshi Midha, Adv.

versus

BANO & ORS

..... Respondent

Through: Ms. Rupika Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Muntasir, aged about 22 years, stated to be working as helper with a private transport company suffered injuries on account of motor vehicular accident that occurred on 17.06.2012 involving motor vehicle bearing registration No.UP 30T 1232 (offending vehicle) which was admittedly insured against third party risk with the appellant insurance company (insurer) for the period in question. His wife and widowed mother, first and second respondents (claimants), instituted an accident claim case (MACT No.374/12) on 17.10.2012 under Sections 166 and 140 of Motor Vehicles Act, 1988 (MV Act) seeking compensation impleading the insurer, driver and owner of the offending vehicle as parties. On inquiry, the tribunal, by judgment dated 30.09.2014 upheld the case about death having occurred due to negligent driving of the offending vehicle. The said finding has attained finality. The tribunal awarded compensation in the sum of Rs.17,51,320/- with interest at 9% per annum in favour of the claimants and directed the

insurer to pay. The amount awarded includes Rs.1 lakh each towards love & affection and loss of consortium, Rs.25,000/- towards funeral expenses and Rs. 10,000/- towards loss of estate, and Rs.15,16,320/- due to dependency loss. In calculating the dependency loss, the tribunal assumed the income of the deceased notionally at Rs.7,020/- on account of minimum wages and added 50% towards future prospects, making deduction of 1/3rd towards personal & living expenses and applied the multiplier of 13.

2. The insurer, by the appeal at hand, questions the computation only on account of future prospects.

3. 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.

4. 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.

5. Since there was no clear proof of the employment or earnings, much less of progressive rise in income, the dependency loss has to be worked out without the element of future prospects. Thus, it is recomputed as $(7,020 \times 2 \div 3 \times 12 \times 18)$ Rs.10,10,880/- rounded off to Rs.10,11,000/-.

6. It is noted that the award towards loss of estate is inadequate. Following the view taken in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshamma* (2015) 9 SCC 150, the award under the said head is increased to Rs.25,000/-.

7. Thus, the total compensation in the case is computed as $(10,11,000 + 2,50,000)$ 12,61,000/-.

8. The award is reduced accordingly. Needless to add, it shall carry interest as levied by the tribunal.

9. By order dated 27.02.2015, the insurance company had been directed to deposit 70% of the awarded amount with proportionate interest which was allowed to be released to the claimants. The insurance company shall deposit the balance of its liability under the modified award with the tribunal within 30 days making it available to be released.

10. Statutory amount, if deposited, shall be refunded.

11. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

MAY 12, 2016/VLD