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

Date of Decision: 02.06.2016

+ **MAC.APP. 137/2008 & CM No.3134/2008**

THE NEW INDIA ASSURANCE CO. LTD. Appellant
Through Mr. Pankaj Seth, Adv.

versus

RESHMI & ORS. Respondents
Through None

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Sher Deen, aged 35 years, working as labour contractor suffered injuries in motor vehicular accident on 16.08.2000 statedly on account of negligent driving of truck bearing registration No.DL 1G B 8165 (offending vehicle) and died in the consequence. His dependent family members, first to seventh respondents (claimants), instituted an accident claim case (suit No.480/2000) on 20.12.2000, seeking compensation under Sections 166 & 140 of Motor Vehicles Act, 1988 (MV Act), on the averments that the accident had occurred due to negligent driving of the offending vehicle by Rashid Ahmed (eighth respondent). It was also pleaded that the offending vehicle was owned by Harish Chand (ninth respondent) and insured against third party risk with the appellant insurance company (insurer). The said driver, owner and insurer were impleaded as party respondents before the tribunal. Additionally, Smt. Zahoor Bi and Sh. Mehtab (tenth and eleventh

respondents herein) were also shown in the array of respondents on the averment that they were parents of the deceased.

2. The tribunal held inquiry and, on the basis of evidence led, by judgment dated 23.11.2007, upheld the case of the claimants that death had occurred due to negligent driving of the offending vehicle. It granted compensation in the sum of Rs.5,98,000/- with interest at 7% per annum from the date of filing of the petition till realization apportioning it amongst the said claimants and parents of the deceased. It is noted that the insurer had taken the plea of the breach of terms and conditions of the insurance policy and on that basis, though directed to satisfy the award, it was granted recovery rights against Harish Chand (ninth respondent), the owner of the offending vehicle.

3. The insurer filed the present appeal questioning the calculation of loss of dependency. It points out that the tribunal had assumed the income of the deceased at Rs.2,524/- per month it being the rate of minimum wages of unskilled worker but thereafter proceeded to draw an average by its comparison with the minimum wages prevailing on the date of the judgment and further enhancing it by the element of future prospects to arrive eventually at the notional income of Rs.4,495/- from which 1/3rd was deducted towards personal & living expenses and the dependency loss computed at the multiplier of 16.

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 led as to the actual income of the deceased, the income has to be calculated on the basis of minimum wages. But then, it has to be noted that the deceased was working as labour contractor. This would put him in the category of supervisory level and, therefore, the minimum wages of non-matriculate supervisory staff is assumed to be the income, it being Rs.2,717/- per month.

7. Taking note of the fact that the number of dependent family members was nine, the deduction on account of personal & living expenses will have to be to the extent of 1/5th. Thus calculated, on the multiplier of 16, the total

dependency loss comes to $(2,717 \times 4 \div 5 \times 12 \times 16)$ Rs.4,17,331/- rounded off to Rs.4,18,000/-.

8. It is noted that the tribunal awarded only Rs.20,000/- towards loss of love & affection and consortium put together and Rs.2,000/- towards burial expenses. Having regard to the date of death, following the view taken by this court in *Madhu Marwaha & Anr vs. Dal Chand & Anr.*, *FAO 102/2001*, decided on 01.02.2016, which is referred by the counsel for the claimants, the award in the sum of Rs.50,000/- each towards loss of consortium and loss of love & affection and Rs.10,000/- each towards funeral expenses and loss to estate are added. Thus, the total compensation in the case comes to $(4,18,000 + \text{Rs.}1,20,000)$ Rs.5,38,000/-.

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. Needless to add, the amount paid under Section 140 of MV Act shall need to be suitably adjusted.

10. The award is modified accordingly.

11. By order dated 03.03.2008, the enforcement of the impugned award was stayed subject to depositing the awarded amount with Registrar General. It was noted in the order dated 13.05.2010 that the insurance company had deposited Rs.8,13,837/- in compliance with the said order. By order passed on the said date, Rs.5,50,000/- was allowed to be released to the claimants, the balance kept in fixed deposit with the registry for a period of two years.

12. It is noted that the tribunal had apportioned the award amongst different claimants by specifying the amounts falling to their respective shares. Since the award has been slightly reduced, it is directed that the amounts already released to the other claimants/dependent family members shall be treated as their respective share in the total compensation, the entire balance now payable including on account of increase in the rate of interest to go to the first claimant (first respondent) Reshmi @ Pappi (widow).

13. The Registrar General shall now calculate the amount payable in terms of the modified award and release the same from the balance lying in deposit refunding the excess, if any, to the insurance company. Conversely, if any amount remains outstanding, the insurer will be obliged to deposit the same with the tribunal within 30 days, making it available to be released.

14. Statutory deposit, if made, shall be refunded.

15. The appeal is disposed of in above terms.

16. Since the award has been modified, a copy of this judgment shall be sent by the registry to the claimants by registered post at the given address.

(R.K. GAUBA)
JUDGE

JUNE 02, 2016
VLD