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

Date of Decision: 26.04.2016

\+ MAC.APP. 227/2013 and CM No.4206/2013

NATIONAL INSURANCE CO. LTD. ..... Appellant

Through: Mr. L.K. Tyagi, Advocate

versus

TARA DEVI & ORS. ..... Respondent

Through: Mr. O.S.Soran, proxy counsel for Mr. D.K. Sharma, Advocate for R-1 & 2

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Mr. Lalit Kumar, a bachelor, 23 years old, engaged as a driver of three wheeler scooter (TSR) to earn his livelihood, died as a result of injuries suffered in a motor vehicular accident that occurred at about 0145 hours on 05.07.2008 involving a collusion between the TSR driven by him on the one hand and truck bearing registration no.HR38C 6519 (truck) on the other. His parents and junior sibling (first to third respondents) filed an accident claim case (suit no. 276/2011) before the Motor Accident Claims

Tribunal (Tribunal) on 25.08.2008 seeking compensation under Sections 166 and 140 of the Motor Vehicles Act, 1988 (M.V. Act), impleading the appellant insurance company (insurer) and the owner of the truck (fourth respondent) as parties. Admittedly, the truck was insured against third party risk for the period in question with the appellant.

2. The tribunal, after inquiry, passed judgment dated 10.01.2013, upholding the case of the claimants that the accident had occurred due to negligence on the part of the fourth respondent, the finding having been returned, *inter alia,* on the evidence of Mr. Surender Mishra, PW-2 (an eye witness), also a TSR driver. The Tribunal assessed compensation in the sum of ₹6,89,592/- and awarded interest at the rate of 9% p.a. in favour of the claimants. The compensation awarded includes ₹1 Lakh towards loss of love and affection, ₹10,000/- each towards loss of estate and funeral expenses and ₹5,69,592/- towards loss of financial dependency, the last component having been calculated on the basis of minimum wages (i.e. ₹4057/- p.m.) of a skilled worker, with an addition of 30% towards future prospects and after applying the multiplier of 18 (having regard to the age of the deceased) and deducting 50% towards personal and living expenses.

3. The insurer, by the appeal at hand, questions the finding on the issue of negligence, its contention being that the evidence shows that the deceased himself was negligent since the TSR driven by him had rammed into a stationary truck from behind at a stage when the latter vehicle was parked on the road side. The insurer also questions the computation of loss of dependency on the ground that future prospects could not have been added and that since the age of the claimants (primarily the parents), was 51 years

and 53 years respectively, at the relevant point of time, the multiplier of 11 should have been applied. *Per contra*, it is submitted on behalf of the claimants that the award under the heads of loss of estates and funeral expenses is inadequate.

3.1 On consideration of the submissions made, this court finds that the contention about the negligence must be rejected for the simple reason that the evidence of the PW-2 (eye witness) clearly showed that though the truck was stationary on roadside, no caution sign had been displayed. Therefore, the finding returned by the Tribunal does not call for any interference.

3.2 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.

3.3 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.

4. Since the deceased was not in any regular employment and his earnings have been notionally assessed, the element of future prospects of increase to the extent of 30% has to be kept out.

5. The contention of the insurance company that the multiplier of 11 should have been applied is correct since it is well settled that the choice of multiplier depends on the age of the claimants or the victim, whichever is higher. Thus the loss of dependency is recalculated on the minimum wages of ₹4057/-. The monthly loss after deducting personal and living expenses of the deceased comes to (₹4057/2) ₹2029/-. On the multiplier of 11, the total loss of dependency is computed as (2029 x 12 x 11) ₹2,67,828/-, rounded off to ₹2,70,000/-.

6. Following the view taken in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshmamma* (2015) 9 SCC 150, the awards on account of loss of estate and funeral expenses are increased to ₹25,000/- each. Thus the total compensation payable in the case comes to (₹2,70,000 + ₹1,50,000/-) ₹4,20,000/-. Needless to add, the award shall carry interest as granted by the Tribunal and shall be apportioned in the manner directed in the impugned judgment. The award is modified accordingly.

7. By order dated 11.03.2013, the insurance company had been directed to deposit the entire awarded amount with upto date interest with the

Registrar General of this court, within the period specified. Out of the said deposit, 50% was allowed to be released, the balance retained in the form of fixed deposit receipt.

7.1 The Registrar General shall now calculate the amount payable to the claimants in terms of the modified award and release the balance to each of them, in light of above directions, refunding the remainder and statutory deposit, if made, to the insurance company.

8. The appeal is disposed of in the above terms. Resultantly, the pending application also stands disposed of.

R.K. GAUBA
(JUDGE)

APRIL 26, 2016
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