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

Date of Decision: 14th March, 2016

\+ **MAC.APP. 263/2012**

FUTURE GENERALI INDIA INSURANCE CO LTD .... Appellant

Through: Mr. Suman Bagga, Pankaj Gupta & Siddhant Jaiswal, Advs.

versus

KAILASH & ORS ..... Respondents

Through: None.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The first respondent had suffered injuries in a motor vehicular accident that occurred at about 03:10 PM on 19.07.2010 involving truck bearing registration no.HR-74-1340 which was admittedly insured against third party risk with the appellant/insurance company (the insurer). He proved to the satisfaction of the tribunal that he was 38 years old on the relevant date and was earning his livelihood as a driver of three wheeler scooter (TSR) and further that he had suffered disability to the extent of 25% permanent in nature, on account of loss of hearing in both ears. The tribunal adopted minimum wages of skilled worker (₹6448/- per month) and

calculated loss of future earning though adding component of future prospects of increase by 50% awarding total compensation at ₹5,35,152/-. This includes ₹4,64,256/- towards loss of future income due to disability. The short issue pressed in this appeal is that the element of future prospects was wrongly factored in.

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 SCC166.

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. This applies to the matter at hand because the

claimant here has not led any evidence showing the income was subject to any periodic increase.

4. In above view, the loss of future income is recalculated without adding amount of future prospects. Since the loss on account of disability to the extent of 25% would be (6448÷4) ₹1612/-, on the multiplier of 15, the total loss of future income would be (1612x12x15) ₹2,90,612/-. The compensation, thus, requires to be reduced by (4,64,256-2,90,160) ₹1,74,096/-. The compensation is, therefore, reduced to (5,35,152-1,74,096) ₹3,61,056/-, rounded off to ₹3,62,000/-. It shall carry interest as awarded by the tribunal.

5. By order dated 14.03.2012, the insurance company had been directed to deposit the awarded amount with up-to-date interest with the Registrar General which was to be held in FD for period of six months. Out of said deposit, fifty percent (50%) was released in terms of the order dated 22.05.2012. The Registrar General shall now calculate the amount payable to the claimant in terms of the award modified as above and release the balance to the claimant refunding the excess in deposit with statutory deposit, if made, to the insurance company.

6. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

MARCH 14, 2016
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