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

Date of Decision: 8th February, 2016

+ **MAC.APP.317/2011**

TATA AIG GENERAL INSURANCE CO LTD Appellant
Through Mr. Arbaaz Hussain, Adv. for Ms.
Shantha Devi Raman, Adv.

versus

SUSHILA DEVI & ORS Respondent
Through Mr. S N Parashar, Adv. for R-1

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Upon inquiry into motor accident claim case No.327/2008 on the petition under Sections 166 and 140 of Motor Vehicles Act, 1988 (MV Act) brought by the first to third respondents respecting the death of Sandeep @ Sonu in motor vehicular accident that occurred on 30.04.2008 involving truck bearing registration No.HR-55/E-8580 (the offending vehicle), compensation in the sum of ₹6,12,000/- was granted holding the appellant and respondents No.4 and 5 jointly and severally liable to pay. The insurance company has brought this appeal under Section 173 of MV Act primarily questioning the computation of loss of dependency in the sum of ₹5,17,000/- on the ground that the element of future prospects for increase has been wrongly added inasmuch as in absence of formal proof to such effect, the Tribunal was constrained to adopt the notional income

of ₹4,057/- rounded off to ₹4,100/- on the basis of minimum wages accruing to the deceased, a 21 year old bachelor, the claimant being the mother and two younger brothers.

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. Lalita 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 salary was subject to any periodic increase. Indeed, the learned counsel for the claimants fairly concedes that no formal proof about the regular employment of the deceased could be mustered as the

claim about he being driver with M/s R K Tour and Travels was not supported by any formal corroborative material.

4. In these circumstances, the loss of dependency needs to be reworked without adding the element of future prospects. Since the deceased was an unmarried person, the personal and living expenses would need to be deducted to the extent of 50%. Thus, the monthly loss of dependency comes to ₹2,050/-. The Tribunal adopted the multiplier of 14, in which regard no grievance is pressed. Thus, the total loss of dependency comes to $(2050 \times 12 \times 14)$ ₹3,44,400/- rounded off to ₹3,45,000/-. Adding the non-pecuniary damages awarded in the sum of ₹95,000/-, the total compensation comes to ₹4,40,000/-.

5. The award of compensation granted by the Tribunal in favour of the first to third appellants in this matter is reduced to ₹4,40,000/-. It shall carry interest in terms of the impugned judgment. The Tribunal had apportioned the compensation amongst the claimants by specifying the amounts. Since compensation has been reduced, the shares of the claimants shall stand reduced proportionately.

6. By order dated 06.05.2011, the insurance company had been directed to deposit the entire award with up-to-date interest out of which 75% was allowed to be released. The Registrar General shall recalculate the amount payable to the claimants in terms of the award modified as above and release the balance, if any, to the claimants and if claimants have received excess, they shall return the same to the insurance company. If it be so required the insurance company may approach the tribunal for assistance in recovery in accordance with law. The excess in deposit shall be refunded to the appellant.

7. The appeal is disposed of in above terms.

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

R.K. GAUBA
(JUDGE)

FEBRUARY 08, 2016
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