$~27

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

Date of Decision: 7th April, 2016

\+ **MAC.APP. 243/2014**

NEW INDIA ASSURANCE COMPANY LTD. ..... Appellant

Through: Mr. Ravinder Singh, Adv.

versus

HAJRA AND ORS. ..... Respondent

Through: Mr. S N Parashar, Adv. for R-1 & 2

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. By judgment dated 06.02.2014, the motor accident claims tribunal (tribunal) decided accident claim case (MACT.No.431/2012) instituted by the first and second respondents (claimants) on 04.12.2012 seeking compensation under Sections 166 and 140 of Motor Vehicles Act, 1988 (MV Act) for death of Mohd. Irfan Saify @ Mohd. Irfan that occurred on 16.09.2012 involving collision between his motorcycle DL-9S-AA-4267 (motorcycle) and Honda City car bearing registration No. CH-03-R-5420 (car), the latter admittedly insured against third party risk with the appellant insurance company (insurer). The tribunal upheld the case of the claimants that the death had occurred due to accident caused on account of negligent driving of the car and, thus, fastened liability on its insurer to indemnify the

owner who was held vicariously liable. The compensation was assessed in the sum of Rs.31,47,000/- which includes Rs.2,35,000/- in the non-pecuniary damages heads of damages besides loss of dependency in the sum of Rs.29,12,000/-. It was awarded with interest at 7.5% per annum from the date of filing of the petition.

2. By appeal at hand, the insurance company questions the loss of dependency on the ground that the element of future prospects of increase to the extent of 30% was wrongly added.

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. The tribunal's record shows that the claimants had examined Basant Kumar (PW2) a representative of a company called Samsara Developers Pvt. Ltd. where the deceased was stated to be employed at the relevant point of time as Electrician-cum-AC engineer at a salary of Rs.20,000/-. The evidence of the said witness undoubtedly shows that the deceased was in regular employment in the said entity but his income was fixed salary. There is no evidence indicating any progressive rise or periodical increase in the earnings. In these circumstances, the loss of dependency has to be worked out on the basis of lump-sum salary of Rs.20,000/- only.

6. Deducting 1/3rd towards personal & living expenses, the monthly loss of dependency comes to (20,000 x 2 ÷ 3) Rs.13,333.33, rounded off to Rs.13,334/-. On the multiplier of 14, rightly adopted by the tribunal as the deceased was 40 years' old, the loss of dependency comes to (13,334 x 12 x 14) Rs.22,40,112/-, rounded off to Rs.22,41,000/-. Adding the non-pecuniary damages, the total compensation comes to (22,41,000 + 2,35,000) Rs.24,76,000/-.

7. 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.

8. The award is modified as above.

9. By order dated 18.03.2014, the insurance company had been directed to deposit the entire award with up-to-date interest with Registrar General within the time specified out of which 70% was allowed to be released. The Registrar General was further directed to keep the rest of the amount in the fixed deposit receipt UCO Bank, Delhi High Court Branch initially for a period of one year to be renewed periodically.

10. The Registrar General is directed to calculate the shares payable to the claimants and release the same with proportionate interest in their favour in terms of the aforementioned directions. If there is any shortfall, the same shall be deposited by the insurance company with the Registrar General within 30 days of today. On the other hand, if excess has been deposited or released, the same shall be refunded with statutory deposit, if made, to the insurer.

11. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

APRIL 07, 2016
VLD