$~10

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

Date of Decision: 1st April, 2016

\+ **MAC.APP. 321/2013**

THE NEW INDIA ASSURANCE CO. LTD.

..... Appellant

Through Mr. J P N Shahi, Adv.

versus

BASANTI NAYAK & ORS.

..... Respondent

Through None

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. On 27.08.2011, Raju Nayak, 32 year old, suffered injuries in a motor vehicular accident involving truck bearing No.P 21 D-9304 (offending vehicle) and died in the consequence. The dependent family members (first to fourth respondents) of Raju Nayak brought claim petition under Sections 166 read with 140 of Motor Vehicles Act, 1988 (MV Act) on 23.02.2012 before the motor accident claims tribunal (tribunal) which registered it as petition No. 51/12. The appellant insurance company (insurer) was impleaded in the said case in addition to the driver and owner of the offending vehicle on the averments that the accident had occurred due to rash driving of the offending vehicle which was upheld. The tribunal awarded compensation in the sum of ₹12,57,304/- with interest at 7.5% per

annum from the date of filing of the petition calculating the said award as under :

Sl.No.	On Account of	Amount (Rs.)
1	Loss of dependency	Rs. 12,02,304/-
2	Loss of Consortium	Rs. 10,000/-
3	Loss of Love and affection	Rs. 25,000/-
4	Loss of Estate	Rs. 10,000/-
5	Funeral Expenses	Rs. 10,000/-
	Total	Rs.12,57,304/-

2. It is noted that the loss of dependency was worked out on the basis of minimum wages of ₹6,422/- for unskilled workers as prevalent at the relevant point of time with addition of future prospects to the extent of 30% and the multiplier of 16 was adopted, the age of the deceased being 32.

3. The only ground taken by the insurance company to challenge the award is the addition of future prospects.

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. Thus, the loss of dependency is recalculated on the basis of notional income of ₹6,422/-. The loss of dependency is calculated as (6,422 x 3 ÷ 4) ₹4,817/- and on the multiplier of 16, the total loss of dependency is computed as (4,817 x 12 x 16) ₹9,24,864/- rounded off to ₹9,25,000/-.

7. It is noted that the award under the non-pecuniary damages is low. Following the view taken in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshmamma* (2015) 9 SCC 150, compensation in the sum of ₹1 lakh each on account of loss of love & affection and loss of consortium and ₹25,000/- each towards loss of estate and funeral expense are added. Thus, the total compensation payable in the case is computed as (9,25,000 + 2,50,000) ₹11,75,000/-.

8. 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.

9. The award is modified as above.

10. By order dated 12.04.2013, the insurance company has been directed to deposit awarded amount with up-to-date interest with the Registrar General within the period specified and out of such deposit 70% was allowed to be released to the claimants in terms of the impugned judgment, the balance having been kept in fixed deposit with UCO Bank, Delhi High Court Branch initially for a period of six months to be renewed periodically.

11. The Registrar General shall now calculate the sums payable to the claimants and release the same with proportionate interest in their favour in terms of the aforementioned direction, refunding the excess, if any, with statutory deposit to the insurer. Conversely, if more amount is required to be paid, the insurer shall be directed to deposit the same with the tribunal within 30 days of this judgment whereupon it shall be released with interest accordingly.

12. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

APRIL 01, 2016
VLD