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

Date of Decision: 11th February, 2016

+ **MAC.APP. 312/2014**

THE ORIENTAL INSURANCE CO LTD Appellant

Through: Mr. A. K. Soni, Adv.

versus

KAVITA NAGAR & ORS Respondents

Through: Mr. Dhananjay Kr. Singh, Adv.
for R-1 to 4.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The insurance company is in appeal against the judgment dated 03.12.2013 of the motor accident claims tribunal (the tribunal) in claim petition under Sections 166 and 140 of the Motor Vehicles Act, 1988 (the MV Act) registered as suit no.411/2010 raising issues with regard to the computation of compensation awarded in favour of the claimants (first to fourth respondents) and also non-consideration and consequent denial of recovery rights against the insured (second respondent), the owner of tanker bearing registration no.HR-46C-4844 (the offending vehicle).

2. The claim petition was filed on 07.03.2011 seeking compensation on account of death of Vinod Nagar in a motor vehicular accident that occurred at about 11:30 PM on 19.10.2010 involving collision between his motorcycle bearing registration no.UP-14X-1606 and the offending

vehicle in the area of Cattle hospital village Palla, Molarband Extension Badarpur, Delhi. The tanker concededly was driven at the time of accident by the fifth respondent who was also impleaded as a party respondent before the tribunal.

3. The claimants proved during inquiry that the deceased was born on 10.04.1976. Since the accident had occurred on 19.10.2010, his age at the time of accident would be less than 35 years. The tribunal, thus, correctly adopted the multiplier of 16 (*Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121).

4. The claimants had pleaded that the deceased was working as site supervisor with a company described as M/s Parthik Builders and Construction Company with salary of ₹15,000/- per month for the last three years. Though first claimant Kavita Nagar appearing as PW1 did testify, on the strength of her own affidavit (Ex.PW1/A) to this effect, during her cross-examination, she changed stand by claiming that salary of her husband was ₹14,000/- per month. The tribunal noted that no documentary evidence in the nature of salary slips, statement of accounts etc. were submitted in support. But, proof of the life style incurred on the family in the nature of school fee receipts (Ex.PW1/8 to Ex.PW1/12) were shown and on that basis the tribunal felt satisfied that the deceased was in the receipt of income to the extent of ₹14,000/- per month.

5. The insurance company contends that in the absence of formal document with regard to the salary receivable or received by the deceased, the tribunal should have adopted the minimum wages as notional income. This court does not agree with these submissions.

The minimum wages cannot become the bench mark in every case where formal proof of income is not shown. The expenditure incurred by the deceased on his family is also an index of the income that he would be earning from whatever avocation he was engaged in. This court has taken a similar view in MAC appeal no.462/2010 (*Royal Sundaram Alliance Insurance Co. Ltd. vs. Sanjida Begum & Ors.*) passed on 15.01.2016. In the facts and circumstances, there is no reason to disturb the finding recorded by the tribunal with regard to the income of deceased at ₹14,000/- per month.

6. There is further contention of the insurance company that future prospects could not have been added. 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.

7. 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. Since there is no pleading or evidence adduced showing that the income of deceased was having a periodic rise, the element of future prospects will have to be removed.

8. In these circumstances, loss of dependency has to be recomputed on the basis of salary of ₹14,000/- on multiplier of 16, after deducting one fourth towards personal and living expenses. The monthly loss of dependency comes to $(14,000 \times 3/4)$ ₹10,500/-. The total loss of dependency works out to $(10,500 \times 12 \times 16)$ ₹20,16,000/-. Thus the compensation awarded will have to be reduced by $(2620800 - 2016000)$ ₹6,04,800/-.

9. In above view, the compensation awarded by the tribunal is reduced from ₹28,55,800/- to ₹22,51,000/-. It shall carry interest as levied by the tribunal. The tribunal had apportioned the compensation amongst the different claimants by specifying amounts. While the share of the first respondent (wife, Kavita) shall continue to be same as levied by the tribunal, the share of other claimants shall be reduced proportionately and dealt with as directed by the tribunal with suitable correction.

10. The insurance company points out that in its written statement it had taken the defence that the driver (fifth respondent herein) was not holding a valid and effective license for the category of the offending vehicle. It is conceded on behalf of sixth respondent (the owner) that

the offending vehicle is a tanker which would carry oil as cargo. Undoubtedly, the cargo carried in the said vehicle would fall in the category of dangerous or hazardous substance within the meaning of the first proviso of Section 14(2) of the MV Act. The tribunal did not consider the defence of the insurance company or its consequences, even though evidence had been led on the subject. It must further be added that the evidence adduced by the insurance company included the statement of Babu Lal (R3W1), a clerk of transport authority, Janakpuri, *inter-alia*, stating that no separate license or endorsement is needed for carrying goods of hazardous nature. This deposition appears to be in the teeth of the provision contained in Section 14(2) of the MV Act and the rules framed in the nature of Central Motor Vehicle Rules, 1989. The statement of Babu Lal (R3W1) is actually no evidence. All that it consists is an opinion of the said official with which neither the tribunal nor the court is bound. To say the least, the deposition of R3W1 was an irresponsible statement and it may be added that the manner in which the learned counsel for the insurance company examined the said witness also raises questions as to his ability to assist the tribunal or to present the cause he was representing.

11. The defence raised by the insurance company cannot be allowed to go unaddressed. Since the tribunal failed to conduct a proper inquiry or to return a clear finding in this regard, the matter to that extent needs to be remitted for appropriate determination in accordance with law. Ordered accordingly. Should the tribunal reach a finding that the driving license of the fifth respondent was not valid for the vehicle carrying hazardous cargo, it will consider the prayer of the insurance

company for grant of recovery rights and pass appropriate orders thereupon.

12. The appellant, fifth respondent and sixth respondent shall appear before the tribunal for aforesaid limited inquiry in accordance with law on 07th April, 2016.

13. The learned counsel for appellant informs that the entire awarded amount with up-to-date interest had been recovered by the tribunal by attachment and in terms of the order dated 02.04.2014 of this court, sixty percent (60%) out of the said amount was released to the claimants. Since the compensation has been reduced, the tribunal shall recalculate the amount payable to the claimants and disburse the balance accordingly, refunding excess amount lying in deposit with it to the insurance company.

14. The statutory deposit, if made, shall also be refunded.

15. The appeal is disposed of in above terms.

**R.K. GAUBA
(JUDGE)**

FEBRUARY 11 2016/ssc