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

Date of Decision: 27th April, 2016

\+ **MAC.APP. 339/2013**

ROYAL SUNDARAM ALLIANCE INSURANCE C O. LTD.

..... Appellant

Through: Ms. Suman Bagga & Mr. Pankaj Gupta, Advs.

versus

NEERAJ ARYA & ORS. ..... Respondents

Through: Mr. Pramod K. Sing, Adv.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The first respondent, then aged 16 years, suffered injuries in a motor vehicular accident that occurred on 22.05.2010 involving negligent driving of Santro car bearing registration no.DL-9CQ-3203 (the offending vehicle), admittedly insured against third party risk for the period in question with appellant/insurance company (the insurer). As a result of injuries, the claimant has been rendered permanently disabled on account of post traumatic stiffness of right knee consequent upon fracture of femur and tibia bones, extent of disability having been certified (Ex.PW3/A) by a board of

doctors of Deen Dayal Upadhyay hospital of Government of NCT, Delhi on 19.09.2012 (page 161 of tribunal's record) to be to the extent of 45% in relation to the said right lower limb. On the accident claim petition (MACT case no.312/2010), instituted by him on 20.11.2010, the motor accident claims tribunal (the tribunal), by its decision dated 02.02.2013, awarded compensation in the sum of ₹8,65,194/- with interest at the rate of seven & half percent (7.5%) per annum from the date of filing petition in his favour calling upon the insurer to pay, calculating the award as under:-

For loss of earning on account of disability	:₹7,39,206/-
Medical bills	:₹ 40,988/-
Pain and suffering	:₹ 40,000/-
Conveyance & special diet	:₹ 20,000/-
Loss of amenities	:₹ 25,000/-
Total	:₹8,65,194/-

(Rupees Eight Lakhs Sixty Five Thousand one hundred and ninety four only)

2. The insurer by the appeal at hand, questions the calculation of loss of earnings on account of disability on the ground that the future prospects was wrongly added in a case where income was notionally assessed at ₹5850/- on the basis of minimum wages.

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 SCC166.

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. This applies to the matter at hand because the claimant here pleaded about gainful employment at a fixed salary and has not led any evidence showing the salary was subject to any periodic increase.

5. In the case of 16 years old person where the income has been notionally assessed, there being no proof of progressive rise in the income, the element of future prospects has to be kept out of consideration.

6. On the multiplier of 18, the loss of future earnings due to disability to the extent of 45% is calculated as (5850x45/100x12x18) ₹5,68,620/-. Adding the other elements awarded by the tribunal, the total compensation

in the case comes to (5,68,620+40,988+40,000+20,000+25,000) ₹6,94,608/-, rounded off to ₹6,95,000/-.

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 15.04.2013, the insurance company had been directed to deposit the entire awarded compensation with up-to-date interest with the Registrar General and out of such deposit 60% was allowed to be released, the balance kept in fixed deposit receipt with UCO Bank, Delhi High Court branch for a period of six months to be renewed periodically. The Registrar General shall calculate the amount payable to the claimants in terms of the award modified as above and release the balance to them refunding the excess in deposit with statutory deposit, if made, to the insurance company.

10. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

APRIL 27, 2016
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