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

Date of Decision: 29th February, 2016

+ **MAC.APP. 191/2016**

KAMLESH & ANR

..... Appellant
Through Mr. Sameer Nandwani, Adv.

versus

MOHD IKLAKH & ORS(MAGMA HDI GENL. INS.CO.LTD.)
..... Respondent
Through None

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

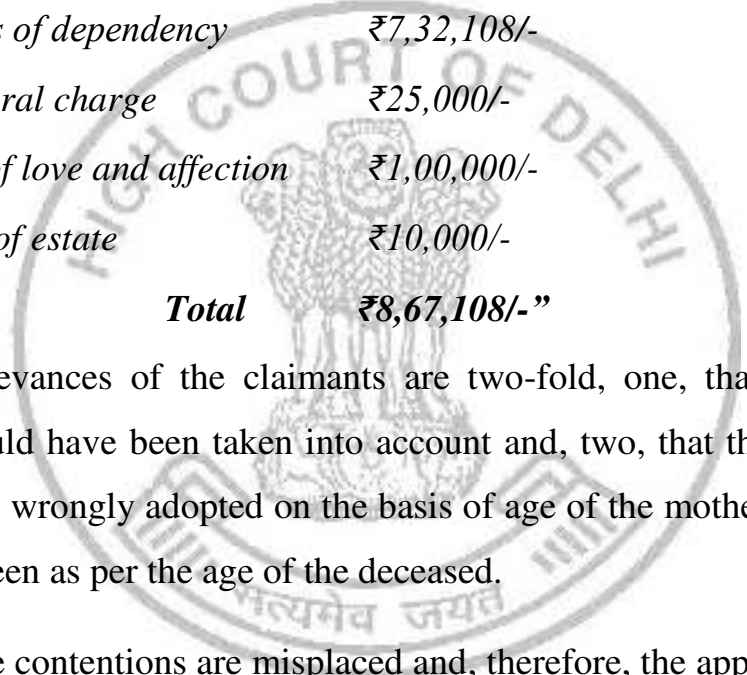
JUDGMENT

R.K.GAUBA, J (ORAL):

1. The appeal at hand has been preferred by the parents of Shiv Kumar, then aged 23 years, he having died in a motor vehicular accident that occurred at about 11.30 PM on 15.07.2013 on being hit by truck No.UP 15AT 7720, concededly insured with the third respondent herein. The appellants had preferred claim petition under Sections 166 and 140 of Motor Vehicles Act, 1988 (MV Act) on 28.11.2013 seeking compensation, the claim case having been registered as MACT case No.565 in which the first and second respondents herein were impleaded as party respondents, they being the owner and driver of the offending vehicle, in addition to the insurance company. The claimants stated before the Tribunal that the

deceased was running the business of a tent house earning ₹15,000/- per month.

2. The Tribunal, on inquiry, found that there was no concrete proof as to the avocation or income of the deceased and thus proceeded to assess the loss of dependency on the basis of minimum wages payable to a matriculate. It awarded compensation in the sum of ₹8,67,108/- with interest, computing it as under :



“1. Loss of dependency	₹7,32,108/-
3. Funeral charge	₹25,000/-
4. Loss of love and affection	₹1,00,000/-
5. Loss of estate	₹10,000/-
Total	₹8,67,108/-”

3. The grievances of the claimants are two-fold, one, that the future prospects should have been taken into account and, two, that the multiplier of 13 has been wrongly adopted on the basis of age of the mother and that it should have been as per the age of the deceased.

4. Both the contentions are misplaced and, therefore, the appeal deserves to be dismissed.

5. 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.

6. 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.

7. Since the deceased was admittedly self-employed there is no scope for future prospects to be added.

8. It is settled law that multiplier is to be adopted having regard to the age of the deceased or claimants, whichever is higher. [*G.M. Kerela SRTC vs Susamma Thomas* (1994) 2 SCC 176; *U.P.S.R.T.C. vs Trilok Chandra* (1996) 4 SCC 362; *New India Assurance Co. Ltd. vs Charlie* AIR 2005 SC 2157; *New India Assurance Co. Ltd. vs Shanti Pathak (Smt.) & Ors.*, (2007) 10 SCC 1; *Ramesh Singh & Anr. vs Satbir Singh & Anr.* (2008) 2 SCC 667; *National Insurance Company Ltd. vs Shyam Singh & Ors.* (2011) 7 SCC 65; *Ashwinbhai Jayantilal Modi vs Ramkaran Ramchandra Sharma & Anr.* (2015) 2 SCC 180]

9. The appeal with accompanying application is dismissed *in limine*.

R.K. GAUBA
(JUDGE)

FEBRUARY 29, 2016
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