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

Date of Decision: 25.04.2016

+ **MAC.APP. 379/2013 and CM No.6785/2013**

THE NEW INDIA ASSURANCE CO LTD Appellant

Through: Mr. P. Acharya, Advocate

versus

ROSHAN LAL & ORS Respondents

Through: Mr. S.N. Parashar, Advocate

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Baljeet Kaur, a house wife, suffered injuries and died in the consequence, on account of a motor vehicular accident that occurred at about 2.30 a.m. on 16.11.2011, involving negligent driving of motor vehicle described as UP 81 AF 4250 (offending vehicle), admittedly insured against third party risk with the appellant insurance company (insurer). Accident claim case (M.A.C.P. 34A/2012), was instituted on 23.03.2012, in which, besides the insurer, the driver and owner of the offending vehicle were added as parties. The Motor Accident Claims Tribunal (Tribunal) held inquiry and rendered its decision on 18.02.2013 upholding the case that

death had occurred due to negligent driving of the offending vehicle. The compensation was assessed as under :-

“PECUNIARY DAMAGES

..1. Loss of dependency	₹17,65,920/-
2. Funeral charges	₹10,000/-
3. Loss of estate	₹10,000/-
4. Loss of Consortium	₹10,000/-

NON-PECUNIARY DAMAGES

5. Loss of love, company and Affection, etc. ₹25,000/-”

6. The insurance cover having been admitted, the appellant was called upon to satisfy the award with interest at 9% p.a in favour of the claimants (first to fourth respondents herein).

7. The insurer has come up with an appeal questioning the calculation of loss of dependency on the ground that future prospects have been wrongly added over and above the monthly income of ₹7,358/- assessed notionally on the basis of minimum wages payable to a ‘non-matriculate’. *Per contra*, the claimants submitted that the non pecuniary damages have not been properly awarded.

8. 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.

9. 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.

10. Since the deceased was not in any regular employment and her earnings have been notionally assessed, element of future prospects of increase to the extent of 25% has to be kept out. The loss of dependency, however, has to be assessed, on the basis of multiplier of 16, given the fact that the age of the deceased was 33 years. Since the number of dependents were four, the deduction on account of personal and living expenditure has to be made to the extent of $\frac{1}{4}$ th. (see judgment of this court dated 25.02.2016 passed in MAC Appeal No.1177/2014, *Reliance General Insurance Co. Ltd. Vs. Murgan and Ors.*). Thus, the monthly loss of dependency is calculated as ₹5519/- ($7358 \times 3 / 4$) and the total loss of dependency is computed as ₹1059648/- ($₹5519 \times 12 \times 16$), rounded off to ₹10,60,000/-.

11. Following the view taken in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshamma* (2015) 9 SCC 150, the non-pecuniary damages in the sum of ₹1 Lakh each on account of loss of love and affection and loss of consortium and ₹25,000/- each towards loss of estate and funeral are added. Thus the total compensation payable in the case comes to (₹10,60,000 + ₹2,50,000/-) ₹13,10,000/-. Needless to say, the award shall carry interest at the rate of 9% p.a. from the date of filing of the petition till realization.

12. The Tribunal had apportioned the award in favour of the claimants by specifying the amounts. By order dated 29.04.2013, the insurance company has been directed to deposit the entire amount with upto date interest with the Registrar General of this court, within a period of five weeks and out of the same, 60% was to be released to the claimants in terms of the tribunal's judgment.

13. Since the amount of award has been reduced, the Registrar General shall now calculate the total amount payable to the claimants. It is directed that the balance of the amount now payable shall be released only to the first claimant (husband), the share of the others being restricted to what has already been received by each of them. Conversely, if excess has been paid, the same shall be liable to be refunded forthwith. The balance lying in the deposit shall be refunded to the insurance company with statutory deposit.

14. The appeal and the pending application are disposed of in the aforesaid terms.

R.K. GAUBA
(JUDGE)

APRIL 25, 2016/yg