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

Date of Decision: 06.05.2016

\+ MAC.APP. 429/2013

ORIENTAL INSURANCE CO. LTD. ..... Appellant

Through: Mr. Amit Gaur and Mr. Pradeep Gaur, Advocates

versus

RENU DEVI & ORS. ..... Respondents

Through: Ms. Neha Garg, Advocate

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Sanjay Kumar Bansal, aged 36 years old, employed as a Senior Sales Executive with a private business house named as M/s. Balaji Distributors at a consolidated salary of ₹12,000/- p.m. suffered injuries in a motor vehicular accident that occurred on 17.03.2010 involving negligent driving of a motor vehicle described as Force Trax Cruiser bearing registration no.HR-99 DH (Tempo) 1563 and died in the consequence. His dependent family members, first to seventh respondents (claimants) instituted an accident claim case (case no.231/10) on 17.04.2010, on the basis of Accident Information Report (AIR), in which proceedings the appellant insurance company (insurer) was also impleaded as a respondent, it

concededly having issued an insurance policy in respect of the offending vehicle against third party risk for the period in question.

2. After inquiry, the Motor Accident Claims Tribunal (Tribunal), by judgment dated 01.12.2012, held that the death had occurred due to negligent driving of the offending vehicle by the eight respondent (first respondent before the tribunal). It awarded compensation in the sum of ₹25,82,200/- with interest at the rate of 7.5% from the date of filing of the petition till the notice under Order 21 Rule 1 of the Code of Civil Procedure, 1908 (CPC) is given by the insurance company and asked the insurer to pay. The said amount includes ₹10,000/- towards funeral expenses, ₹25,000/- towards loss of love & affection, ₹10,000/- towards loss of estate and ₹10,000/-towards loss of consortium besides ₹25,27,200/- calculated as loss of dependency on the multiplier of 15 (rightly so chosen) though after the emoluments from the private service (₹12,000/- p.m.) had been appreciated by addition of 30% towards future prospects and $1/10^{th}$ had been deducted towards personal & living expenses.

3. The insurer, by the appeal at hand, questions the computation of loss of dependency taking exception to the element of future prospects and deduction on account of personal & living expenses to the extent of $1/10^{th}$. It also submits that there was a breach of the terms and conditions of the insurance policy as permit of the offending vehicle was not produced, in spite of the notice.

4. *Per contra*, the claimants argue through counsel that the awards under the non-pecuniary heads of damages and rate of interest are inadequate.

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. 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.

7. Having heard both sides and having gone through the record, this court finds substance in the submission of the insurance company against addition of future prospects. PW-2, who stepped into the witness box to prove the engagement in private service of the deceased, did not produce any material to show the regular employment of the deceased with

any stipulation for progressive rise in income. Hence, the element of future prospects has to be kept out.

8. In the judgment of *Sarla Verma* (supra), the Supreme Court had specified the deduction towards the personal & living expenses to be to the extent of 1/5th in cases where the number of dependants were more than 6. This dispensation was approved by a bench of three Hon'ble Judges of the Supreme Court in *Reshma Kumari & Ors. Vs. Madan Mohan & Anr*., (2013) 9 SCC 65.

9. In these circumstances, the calculation of loss of dependency is to be worked out without the element of future prospects and by taking personal & living expenses to the extent of 1/5th only. Thus the total loss of dependency comes to (₹12,000/- x 4/ 5 x 12 x 15) ₹17,28,000/-

10. Following the view taken in *Rajesh & Ors. v. Rajbir Singh & Ors.* (2013) 9 SCC 54 *Shashikala V. Gangalakshmamma* (2015) 9 SCC 150, the non-pecuniary damages in the sum of ₹1,00,000/- each towards loss of love & affection and loss of consortium and ₹25,000/- each towards funeral expenses and loss to estate are added.

11. Thus, the total compensation comes to (₹17,28,000/- + 2,50,000/-) ₹19,78,000/-

12. Following the consistent view taken by this court, the rate of interest is increased to 9% p.a. from the date of filing of the petition till realization. [see judgment dated 22.02.2016 in MAC.APP. 165/2011 *Oriental Insurance Co Ltd v. Sangeeta Devi & Ors*.].

13. The award is modified as above.

14. By order dated 13.05.2013, the insurance company had been directed to deposit the entire awarded compensation with upto date interest with the Registrar General within the period specified and out of such deposit eighty percent (80%) was allowed to be released to the claimants in terms of the impugned judgment, the balance having been kept in fixed deposit in the UCO Bank, Delhi High Court Branch, New Delhi, initially for a period of six months with a provision for periodical renewal.

15. 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 deposits, if made, to the insurer. Conversely, if more amount is required to be paid, the insurer shall be directed to deposit the same with interest with the tribunal within 30 days of this judgment whereupon it shall be released to the claimants accordingly.

16. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

MAY 06, 2016
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