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

Date of Decision: 06.05.2016

\+ MAC.APP. 394/2013 and CM No.7086/2013

THE NEW INDIA ASSURANCE CO. LTD. ..... Appellant

Through: Mr. K.K. Bhat and Mr. Sandeep Bisht, Advocates

versus

GUDDO DEVI & ORS. ..... Respondents

Through: Mr. Saurabh Sachan, Advocate for R-1 to R-5

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Mahender Singh, aged 34 years, admittedly engaged in a private service with no clear proof of regular employment or earnings, died in a motor vehicular accident that occurred on 16.07.2012 involving negligent driving of a Maruti Wagon R bearing registration no.DL-2CV-8577 (offending vehicle) concededly insured against third party risk with the appellant insurance company. On the accident claim petition (suit no.47/2012) instituted on 22.09.2012, under Sections 166 and 140 of the Motor Vehicles Act, 1988 (M.V. Act) by first to fifth respondents

(claimants). The Motor Accident Claims Tribunal (Tribunal), by judgment dated 15.03.2013, awarded total compensation in the sum of Rs.13,69,240/- with interest at the rate of 7.5% p.a. from the date of filing of the petition till realization, the said amount inclusive of ₹10,000/- towards funeral expenses, ₹25,000/- towards loss of love & affection, ₹10,000/- towards loss to estate and ₹10,000/- towards loss of consortium, the balance ₹13,14,240/- calculated as loss of dependency with the multiplier of 16 (rightly so adopted) after deduction of 1/4th towards personal and living expenses (again rightly so) after assuming the income at ₹7,020/- (it being the minimum wages of an unskilled worker at the relevant point of time) improved with addition of 30% future prospects.

2. The insurer which has been burdened with the liability to pay is in appeal and questions only the element of future prospects. *Per contra*, claimants argue that the non-pecuniary damages as awarded and the rate of interest as levied are inadequate.

3. Having heard both sides, this court finds substance in the contentions of both sides.

4. 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.

5. 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.

6. Since there was no proof of regular engagement or progressive rise in income, the loss of dependency has to be worked out without future prospects being factored. Therefore, it is re-calculated as (₹7020 x 3 /4 x 12 x 16) ₹10,10,880/-, rounded off to ₹10,11,000/-.

7. 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. Thus, the total compensation in the case comes to (₹10,11,000/- + ₹2,50,000/-) ₹12,61,000/-.

8. 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*.].

9. By order dated 03.05.2013, 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 seventy percent (70%) 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.

10. 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 obliged to deposit the same with interest with the tribunal within 30 days of this judgment whereupon it shall be released accordingly.

11. The appeal and the pending application stand disposed of in above terms.

R.K. GAUBA
(JUDGE)

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