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

Date of Decision: 05.05.2016

+ **MAC.APP. 393/2013**

THE NEW INDIA ASSURANCE CO. LTD. Appellant

Through: Mr. P. Acharya and Mr. Sameer
Nandwani, Advocates

versus

MAHADEVI VERMA & ORS. Respondents

Through: Mr. Nitin Yadav for R-1 & 2

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Arun Verma, aged 42 years, a bachelor, died as a result of the injuries suffered in a motor vehicular accident that had occurred on 04.05.2006 involving negligent driving of a motor vehicle bearing registration no. HR-38H 9948 (offending vehicle) admittedly insured against third party risk with the appellant insurance company (insurer). His parents (first and second respondents) instituted an accident claim case (suit no.218/2007) on 23.04.2007 impleading the insurer as the respondent in addition to the driver and owner of the offending vehicle alleging negligent driving to be the cause of the accident.

2. This contention was upheld on inquiry by the tribunal, by judgment dated 15.12.2012, whereby compensation in the sum of ₹6,43,369/- with interest at the rate of 7.5% was awarded as compensation.

3. The insurance company which has been burdened with liability to pay has come up in appeal challenging the award raising the contention that there was no justification for income to be assumed to be ₹5,000/- without any evidence and further the element of future prospects of increase to the extent of 30% was erroneous. *Per contra*, the counsel for the claimant submitted that the award of ₹25,000/- towards loss of love & affection and ₹10,000/- towards funeral expenses with rate of interest only at 7.5% p.a. are inadequate.

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. It is found on perusal of the record that no formal proof of gainful employment of the deceased was adduced. Hence, the element of future prospects needs to be kept out. It is noted that the deceased was pursuing a graduation course from Delhi University. In these circumstances, in absence of evidence showing better prospects only the minimum wages for matriculates could have been taken into account to calculate the loss of dependency. The minimum wages for a matriculate at the relevant point of time were in the sum of ₹3719/-. The deceased being a bachelor, 50% has to be deducted and the dependency loss has to be computed on the multiplier of 14 rightly chosen by the tribunal. Therefore, the loss of dependency is calculated as $(3719 / 2 \times 12 \times 14)$ ₹3,12,396 /-

7. Following the view taken in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshamma* (2015) 9 SCC 150 , non-pecuniary damages on account of love & affection is increased to ₹1,00,000/- and funeral expenses are increased to ₹25,000/- and further amount of ₹25,000/- is added towards loss to estate. Adding these components and the medical expenses to the tune of ₹62,369.15, the total compensation in the case is computed as $(₹3,12,396/- + ₹1,00,000/- + ₹25,000/- + ₹25,000/- + ₹62,369.15)$ ₹5,24,765.15, rounded off to ₹5,25,000/-.

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. The award is modified accordingly.

10. By order dated 03.05.2013, the insurance company had been directed to deposit the entire awarded amount with upto date interest with the Registrar General within the period specified, out of which 50% was allowed to be released, the balance kept in fixed deposit for a period of six months to be renewed periodically. The Registrar General shall now calculate the amount payable to the claimants under the modified award and release the balance to the claimants accordingly, refunding the excess in deposit with statutory deposit, if made, to the insurance company.

11. The appeal is disposed of in aforesaid terms.

R.K. GAUBA
(JUDGE)

MAY 05, 2016

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