$~16 & 17

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

Date of Decision: 04.05.2016

\+ **MAC.APP. 218/2014**

NEW INDIA ASSURANCE COMPANY LTD ..... Appellant
Through Mr. Ravinder Singh and Ms. Raveesha Gupta, Advs.

versus

SAVITRI DEVI & ORS ..... Respondent
Through None

\+ **MAC.APP. 477/2014**

SANJEEV ..... Appellant
Through Mr. Pradeep Kumar Arya, Mr. Narinder Chaudhry and Mr. Raj Karan Sharma, Advs.

versus

THE NEW INDIA INSURANCE CO. LTD & ORS ..... Respondent
Through Mr. Ravinder Singh and Ms. Raveesha Gupta, Advs.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Sonia, a young unmarried girl of 22 years age died on account of injuries suffered in a motor vehicular accident that occurred on 16.05.2012

involving negligent driving of truck bearing registration No.HR-63A-5165 (the offending vehicle), admittedly insured against third party risk for the period in question with New India Insurance Co. Ltd. (appellant in MAC.APP.No.218/2014). Her mother (first respondent in MAC.APP.No.218/2014) instituted an accident claim case (suit No.13/12) on 11.10.12 seeking compensation, impleading New India Insurance Co. Ltd. (insurer) as one of the party respondents in addition to Sanjeev son of Gyan Chand (appellant in MAC.APP.No.477/2014) and Ram Lal son of Fannu Paswan (third respondent in MAC.APP.No.218/2014) on the averments that they are the owner and driver respectively of the offending vehicle. The tribunal held inquiry and, by judgment dated 20.12.2013, upheld the case of the claimant that death of Sonia had occurred due to negligent driving of the offending vehicle. It assessed the compensation in the sum of ₹11,41,000/- and awarded it with interest at 7.5% per annum from the date of filing of the petition in favour of the claimant, the said amount inclusive of loss of income (dependency loss) in the sum of ₹10,95,120/- besides ₹25,000/- towards loss of love & affection and ₹20,000/- towards funeral expenses.

2. The insurer had pleaded that there was a breach of terms and conditions of the insurance policy as the driver did not possess a valid or an effective driving license. In absence of any evidence to the contrary from the driver or owner of the offending vehicle the tribunal upheld this contention. Thus, the insurer while being directed to pay the compensation to the claimant was granted recovery rights against the owner.

3. The insurer is in appeal (MAC.APP.No.218/2014) on the ground that the future prospects have been wrongly added over and above the income of the deceased notionally assessed on the basis of minimum wages (₹7,020/-) of an unskilled worker. It is noted at the same time that the award under the non-pecuniary heads of damages and the rate of interest levied by the tribunal are inadequate.

4. The owner of the offending vehicle is in appeal (MAC.APP.No.477/2014) on the plea that the driver was in possession of a valid driving license issued by the license authority at Nagaland, it being valid for the period 21.11.2011 to 07.04.2015 for heavy transport vehicle. A copy of what purports to be a driving license so issued along with a verification report purportedly issued by office of District Transport Officer, Motor Vehicles Department, Nagaland have been submitted with the said appeal (pages 46 – 49 of paper book).

5. Arguments have been heard. Record perused.

6. The claimant had submitted before the tribunal that the deceased was employed with Aanganwari Kendra from where she was earning ₹4,000/- as salary and further that she was also earning ₹15,000/- from tutorial services rendered. The evidence led in this regard was not believed by the tribunal, apparently as no formal proof was produced. The tribunal, thus, proceeded to assume the income notionally and further added future prospects.

7. 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.

8. 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.

9. Given the facts and circumstances of the case at hand, there was no occasion for future prospects to be added in absence of formal proof of income. It also, however, need be noted that the claimant had proved document (Ex.PW1/6) showing that the deceased was a matriculate. In these circumstances, the minimum wages of a matriculate (₹8,528/-) should have been adopted. The calculation of loss of dependency is, thus, made afresh. After deduction of ½ towards personal & living expenses, and applying the multiplier of 13, rightly so chosen, the loss of dependency is calculated as (8,528 ÷ 2 x 12 x 13) ₹6,65,184/- rounded off to ₹6,70,000/-.

10. Following the view taken in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshmamma* (2015) 9 SCC 150, compensation in the sum of ₹1 lakh on account of loss of love & affection and ₹25,000/- each towards loss of estate and funeral expenses are added. Thus, the total compensation payable in the case comes to (6,70,000 + 1,50,000) ₹8,20,000/-.

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

12. The award is modified as above.

13. Coming to the contention of the owner of the offending vehicle in his appeal, the learned counsel for the insurer fairly conceded that since the document purporting to be a license is now being shown and since it has been submitted on behalf of the owner of the offending vehicle that the document is genuine and he is ready to lead formal evidence to prove this contention, the matter to that extent would require further inquiry. In view of the above, the limited issue as to whether there was a breach of terms and conditions of the insurance policy is remitted for further inquiry to the tribunal for fresh adjudication. For purposes of such inquiry, it shall primarily be the burden of the owner of the offending vehicle Sanjeev to prove by positive cogent evidence that the driver of the offending vehicle (*i.e.* Ram Lal) was in possession of a driving license valid and effective for purpose of the offending vehicle on the date of accident. If owner of the offending vehicle successfully brings home this contention, the recovery

rights granted by the tribunal would stand set aside. Conversely, if he were to fail in proving the said contention, the insurer will be at liberty to recover the compensation paid in the case along with the component of interest from the owner of the offending vehicle. If the tribunal returns a finding that the document thus presented is not genuine, it shall consider expediency of initiating proceedings against the owner and driver under the criminal law and pass necessary orders.

14. The parties are directed to appear before the tribunal for above limited inquiry on 18.07.2016.

15. By order dated 12.03.2014 (in MAC.APP.No.218/2014), the insurance company had been directed to deposit the entire awarded amount with up-to-date interest accrued with the Registrar General of this Court within the specified period, out of which 80% was allowed to be released, the balance directed to be kept in fixed deposit receipt with UCO Bank, Delhi High Court branch for a period of one year to be renewed periodically. The Registrar General shall now calculate the amount payable to the claimant in this case and release the balance, if any, to her from out of the fixed deposit receipt, refunding the excess, if any, to the insurance company, along with statutory deposit, if made.

16. Both appeals are disposed of in above terms.

R.K. GAUBA
(JUDGE)

MAY 04, 2016
VLD