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

Date of Decision: 05.05.2016

+ MAC.APP. 160/2015 and CM No.2915/2015

SHRIRAM GENERAL INSURANCE CO LTD Appellant

Through: Mr. P. Acharya, Advocate

versus

USHA & ORS

..... Respondents

Through: Mr. S.N. Parashar, Adv. for R-1 to 4

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Rattan Kumar, aged 48 years, suffered injuries in a motor vehicular accident that occurred on 02.09.2013 involving rash driving of a motor vehicle bearing registration no.HR-63B-0576 (offending vehicle), which was concededly insured against third party risk with the appellant insurance company (insurer) for the period in question and died in the consequence. His dependent family members (first to fourth respondents/claimants) instituted an accident claim case (MACA 249/2013) on 21.11.2013, impleading the insurer as a respondent in addition to the driver and owner of the offending vehicle, on the averments that the accident had occurred due to the negligent driving of the offending vehicle.

2. The tribunal held inquiry and, by judgment dated 26.11.2014, upheld the contention of the claimants about the death having occurred due to the accident caused on account of the negligent driving of the offending vehicle and, thus, held the driver (fourth respondent) to be liable, he being the principal tortfeasor alongwith the owner (fifth respondent) as the person vicariously liable. Since the offending vehicle was insured against third party risk with the appellant, it was directed to satisfy the award of compensation assessed in the sum of ₹14,09,511/- with interest at the rate of 7.5% p.a. from the date of filing of the petition. It may be noted that the said amount includes ₹1,00,000/- each towards loss of love & affection and loss of consortium, ₹25,000/- towards funeral expenses and ₹10,000/- on account of loss of estate besides ₹11,74,511/- for loss of dependency.

3. The insurer is in appeal to submit that the tribunal fell into error by calculating the loss of dependency on the assumed income of ₹92,664/- p.a. (worked out on the basis of minimum wages) by adding the element of future prospects of increase to the extent of 30%. *Per contra*, the counsel for the claimants pointed out that the awards under the non-pecuniary heads of damages have been granted with reference to the judgment of the Supreme Court in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54, (2013) 9 SC 54 and the judgment of this court in MACA 743/2012 in the matter of *Chander Kala and Anr. Vs. Satpal & Ors*, decided on 11.09.2013. It is argued that in *Rajesh & Ors. Vs. Rajbir Singh* (supra) award in the sum of ₹1,00,000/- each towards loss of love and affection and loss of consortium with funeral expenses in the sum of ₹25,000/- were granted in the fact-situation wherein the accident had occurred on 05.10.2007. It is

also pointed out that similar awards under non-pecuniary heads of damages were made by the Supreme Court in case reported as *Kala Devi Vs. Bhagwan Das Chauhan* (2015) 2 SCC 771 which arose out of fatal accident that had occurred on 15.12.2003. It is the submission of the claimants that award of similar amount in the context of cause of action that arose on 02.09.2013 is inadequate. It is further the submission of the claimants that the rate of interest levied by the tribunal is on the lower side.

4. Having heard both sides and having perused the record, this court finds substance in the contention raised by the appellant and also the submissions made on behalf of the claimants.

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. 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. This applies to the matter at hand because the claimant here pleaded about gainful employment at a fixed salary and has not led any evidence showing the salary was subject to any periodic increase.

7. Since the income of the deceased had to be notionally assessed, there being no clear and cogent proof as to the gainful employment, much less any proof as to the progressive rise in income, the element of future prospects could not have been factored in. As the deceased was 48 years old, the multiplier of 13 was correctly adopted. Having regard to the number of dependants, who have come up to claim compensation, 1/4th deduction on account of personal & living expenses was appropriate. The loss of dependency is, therefore, recalculated as (₹7722/- x 3 /4 x 12 x 13 ₹9,03,474/-), rounded off to ₹9,05,000/-.

8. The contention of the claimants as to the non-pecuniary heads of damages is correct. The award on account of loss of consortium and loss of love and affection and funeral expenses as granted in *Rajesh Vs. Rajbir* (supra) in the context of an accident that had occurred on 05.10.2007 was adopted by the Supreme Court in a case later decided reported as *Shashikala V. Gangalakshamma* (2015) 9 SCC 150 wherein the fatal accident had occurred on 14.12.2006. Similar awards were made in *Kala Devi* (supra) pertaining to cause of action of 15.12.2003. The assessment of non-pecuniary damages under these heads with reference to cause of action that

had arisen in 2003-2007 cannot remain the same even after elapse of almost a decade. The value of money has substantially eroded over the period on account of effect of inflation. It is the duty of this court to periodically reassess the awards on non-pecuniary heads of damages so as to bring in suitable correction to restore the value of money.

9. For these reasons, it is held that in the present case where the death had occurred on 02.09.2013, the award under the heads of loss of love and affection and loss of consortium shall be ₹1,50,000/- each. Similarly, the awards on account of funeral expenses and loss of estate also deserve to be increased to ₹50,000/- each. The awards are directed to be enhanced to the above-said levels in the case at hand.

10. Thus, the total compensation in the case is computed as (₹9,05,000/- + ₹1,50,000/- + ₹1,50,000/- + ₹50,000/- + ₹50,000/-) ₹13,05,000/-.

11. 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.*].

12. The award is modified accordingly.

13. By order dated 20.02.2015, the insurance company had been directed to deposit 70% of the awarded amount with proportionate interest in the bank within the period specified which deposit was allowed to be released to the claimants in terms of the impugned judgment. The tribunal shall now recalculate the amount payable to the claimants. The insurance company is directed to deposit the balance of its liability under the modified award with

the tribunal within 30 days of today, making it available for being released to the claimants as per the directions in the impugned judgment.

14. Statutory deposit, if made, shall be refunded by the registry after confirming that the award has been satisfied.

15. The appeal and the pending application are disposed of in above terms.

MAY 05, 2016
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R.K. GAUBA
(JUDGE)

