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

Date of Decision: 11th May, 2016

\+ **MAC.APP. 448/2013**

THE NEW INDIA ASSURANCE CO LTD

..... Appellant

Through: Mr. Pankaj Seth, Adv.

versus

SUMAN & ORS

..... Respondent

Through: Ms. Himani Bhatnagar, Adv. for R-1 to 8

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Chittar Mal, 38 years old working as *palledar* (loader) suffered injuries in motor vehicular accident that occurred on 24.09.2011 involving negligent driving of truck No.HR 37A 3757 (the offending vehicle) and died in the consequence. The dependent family members of Chittar Mal, first to eighth respondents (claimants), instituted accident claim case (MACT No.03/12) on 04.01.2012 impleading the appellant insurance company (insurer), driver and owner of the offending vehicle as respondents. It was admitted before the tribunal that the appellant (insurer) had issued an insurance policy in respect of the offending vehicle against third party risk for the period in question. The tribunal held inquiry and, by the judgment dated 16.02.2013, found the case of negligent driving leading

to the fatal accident having been brought home. By the impugned judgment, it awarded compensation in the sum of ₹13,42,198/- with interest at 9% per annum, the said amount being inclusive of ₹12,02,198/- towards loss of dependency, the balance in the total sum of ₹1,30,000/- awarded as non-pecuniary damages under various heads.

2. The insurance company while contesting the case had pleaded that there was a breach of terms and conditions of the insurance policy as the vehicle was not covered by a valid permit for Delhi. This contention was rejected by the tribunal and the insurance company was directed to pay the compensation.

3. By the appeal at hand, the insurer questions the calculation of loss of dependency submitting that the element of future prospects to the extent of 30% was erroneous in a case where income has been assessed notionally on the minimum wages of ₹6,422/- per month as prevalent at the relevant point of time. The insurer also presses for recovery rights on the issue of permit. *Per contra*, the claimants submitted that the award under the non-pecuniary damages is 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. The deceased was admittedly working as a loader. There is no evidence adduced as to his regular employment or earnings. With no evidence whatsoever having been brought out to show progressive rise in income, the dependency loss has to be worked out without the element of future prospects. After deducting 1/5th towards personal & living expenses (noticeably, there are eight claimants) on the multiplier of 15 in view of the age of the deceased, the dependency loss is calculated as (6,422 x 4 ÷ 5 x 12 x 15) Rs.9,24,768/- rounded off to Rs.9,25,000/-.

7. 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 Rs.1 lakh each on account of loss of love & affection and loss of consortium and Rs.25,000/- each towards loss of estate and funeral expense are added. Thus, the total compensation payable in the case comes to (9,25,000 + 2,50,000) Rs.11,75,000/-. Needless to add, it shall carry interest as levied by the tribunal.

8. The tribunal by the impugned judgment had specified the amounts falling to the respective shares of different claimants.

9. By order dated 17.05.2013, the insurance company had been directed to deposit the entire awarded amount with up-to-date interest whereupon 70% was allowed to be released, the balance kept in fixed deposit receipt with UCO Bank, Delhi High Court branch initially for a period of six months to be renewed periodically. Since the award has been reduced, it is directed that the amounts already released to the other claimants shall be treated as their respective shares and the balance now payable shall entirely go to the first respondent (widow) alone.

10. It was not disputed before the tribunal that the vehicle was not covered by a valid permit for the Union Territory of Delhi. The vehicle is registered in the State of Haryana. In these circumstances, the plea of insurance company about breach of terms and conditions of the insurance company should have been accepted. Thus, it is granted recovery rights against the owner and driver.

11. Statutory deposit, if made, shall be refunded.

12. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

MAY 11, 2016
VLD