$~4 to 6

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

Date of Decision: 28th January, 2016

\+ MAC.APP. 487/2011

ICICI LOMBARD GENERAL INSURANCE CO. LTD. .... Appellant

Through: Ms. Suman Bagga, Adv.

Versus

SARASWATI DEVI &ORS. ..... Respondents

Through: Mr. Jitender Kamra, Adv. for claimant/respondent No.1.
Mr. Pankaj Seth, Adv. for National Insurance Co.
Mr. Zamir Ahmed, Adv. for R-2.
Mr. M.L. Sharma, Adv. for R-3.

\+ MAC.APP. 488/2011

ICICI LOMBARD GENERAL INSURANCE CO. LTD. .... Appellant

Through: Ms. Suman Bagga, Adv.

Versus

SARASWATI DEVI &ORS. ..... Respondents

Through: Mr. Jitender Kamra, Adv. for claimant/respondent No. 1 to 4.
Mr. Pankaj Seth, Adv. for National Insurance Co.
Mr. Zamir Ahmed, Adv. for R-5.
Mr. M.L. Sharma, Adv. for R-6.

\+ MAC.APP. 489/2011

ICICI LOMBARD GENERAL INSURANCE CO. LTD. .... Appellant

Through: Ms. Suman Bagga, Adv.

Versus

GUDDI DEVI &ORS. ..... Respondents

Through: Mr. Jitender Kamra, Adv. for claimant/respondent No. 1 to 6.
Mr. Pankaj Seth, Adv. for National Insurance Co.
Mr. Zamir Ahmed, Adv. for R-7.
Mr. M.L. Sharma, Adv. for R-8.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. On 4.8.2007 at about 1 p.m., a motor vehicular accident took place in the area of village Kelawan PS Salempur, Tehsil Sikarpur, District Bullandshahr, UP initially involving two vehicles, namely, mini truck make TATA 407 bearing registration No. UP 13A 1830 (so described in the pleadings and impugned judgments and hereinafter referred as "the offending vehicle") and Toyota Qualis bearing registration No. DL IVA 3364 (hereinafter referred to as "the Qualis"). In the wake of the collision between the offending vehicle and Qualis, a third vehicle, also on the move at the same place and on the public road, namely Indigo bearing registration No. UP 13N 3322, (hereinafter referred as "the Indigo") got entangled, making it a multiple collision.

Several persons were injured in the accident including Dr. Tej Singh Verma who was travelling with his wife Saraswati Devi in the Qualis. Dr. Tej Singh Verma died as a consequence. The Qualis was driven at the relevant point of time by Anil Kumar who also received severe injuries and succumbed to the same. Another person named Bhagwan Singh was also travelling in the Qualis and was similarly injured.

2. A claim petition under Sections 166 and 140 of Motor Vehicles Act, 1988 (MV Act) were preferred by Saraswati Devi on behalf of herself and on behalf of other legal heirs of Dr. Tej Singh Verma respecting his death, it having been registered as MACT No. 240/2010. Saraswati Devi filed a separate petition claiming compensation for injuries suffered by herself, it having been registered as MACT No. 244/2010. On the other hand, the legal heirs of Anil Kumar, which would include his wife Guddi Devi, deceased's son Sandeep Kumar, daughters Neha and Nisha and parents Pati Ram and Krishna Devi filed a petition, registered as MACT No. 245/2010. The parents of deceased Anil Kumar, however, died on 22.9.2013 and 28.5.2013 respectively, and, thus, their names stand deleted from the array of parties by order dated 14th August, 2015. Similarly, injured Bhagwan Singh filed his own petition. His claim case was inquired into at the same time and is now the subject matter of MAC Appeal No. 486/2011, which, on account of his subsequent death, is presently not ripe for hearing.

3. It is stated at bar by the counsel on all sides that all the four petitions (i.e. including the petition of Bhagwan Singh) were consolidated for purposes of inquiry, and evidence was led, commonly on the file of MACT No. 245/2010, it having been treated as the lead case.

4. All the claim petitions were considered and decided on 01.12.2010, albeit through separate judgments. In the MACT No. 240/2010 respecting death of Dr. Tej Singh Verma, compensation in the sum of ₹ 9,89,980/- was granted. In MACT No. 244/2010, respecting injuries of Saraswati Devi, compensation in the sum of ₹ 46,000/- was granted. In the MACT No. 245/2010, on account of death of Anil Kumar, compensation in the sum of ₹ 11,87,550/- was granted.

5. The claimants in each case had impleaded Shakir and Ram Charan Singh, driver and owner of the offending vehicle as the respondents, in addition to the appellant, the insurer of the offending vehicle.

6. The above-mentioned awards are now the subject matter of challenge in MAC Appeal Nos. 488/2011, 487/2011 and 489/2011 respectively. It is admitted by the appellant insurer that the offending vehicle was duly insured against third party risk for the period in question, though its contentions are that there had been a breach of terms of the policy conditions.

7. The claimants had also impleaded the owner and insurer of the other two vehicles involved in the accident as party respondents. The tribunal, however, found the driver of the offending vehicle to be responsible for the accident and, thus, held him to be the principal tort-feasor and, consequently, held the owner of the said vehicle to be vicariously liable. It is on the basis of these findings that the said two party respondents, and the appellant insurance company, were held jointly and severally liable to pay compensation in each case.

8. Feeling aggrieved, the appellant insurance company has come up with a challenge to the directions in the said three impugned awards on

the common ground that accident had occurred due to contributory negligence on the part of Anil Kumar, who was the driver of Qualis. The argument raised was that there had been a head-on collision between the offending vehicle and Qualis, and, for this reason, the driver of Qualis, namely, Anil Kumar, must also be held responsible. Though conceding in the claim cases of death of Dr. Tej Singh Verma and injuries of Saraswati Devi that the claimants would have a choice in the case of composite negligence, the insurance company, in appeal, nonetheless, presses for apportionment of liability against the owner and insurer of Qualis on the assertion that Anil Kumar, the driver of the said vehicle, also was accountable.

9. The plea of contributory negligence did not find favour with the tribunal, and in the opinion of this court, for legitimate and sound reasons. The evidence led during the inquiry included the depositions of Saraswati Devi and Bhagwan Singh who were passengers in Qualis. Their evidence clearly show that the collision had occurred because of sudden lane changing by the driver of the offending vehicle. In the face of this fact, which was not refuted by any cross-examination and which is corroborated by the evidence collected by the investigating police, as made part of the report under Section 173 of the Code of Criminal Procedure, 1973, copy whereof was also submitted as evidence during inquiry, there is no room for doubt that the accident had occurred solely on account of rash driving on the part of the driver of the offending vehicle. The contention about contributory negligence on the part of Anil Kumar, thus, must be rejected.

10. The learned counsel for appellant submitted that there is no challenge to the quantum of compensation awarded in MACT Case Nos.

240/2010 and 244/2010 respecting death of Dr. Tej Singh Verma and injuries of Saraswati Devi. Thus, the said appeals must be dismissed.

11. The appellant insurance company, however, submits that in the case of claim on account of death of Anil Kumar, the tribunal fell into error by taking into account the prospects of future increase in income even though there was no formal proof of his income and, thus, loss of dependency has been worked out more than what could have been granted.

12. 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 SCC166.

13. Against the above backdrop, by judgment dated 22.01.2016 passed in MAC Appeal No. 956/2012, *Sunil Kumar vs. Pyar Mohd & Ors.*,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. 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.

14. In view of the above, the contention of the appellant insurance company must be upheld. The calculation of compensation on account of loss of dependency will need to be worked out afresh. The tribunal accepted the evidence that Anil Kumar was receiving ₹ 5,000/- as fixed salary. Having regard to the number of dependants, one fourth will have to be deducted towards personal and living expenses. Thus, monthly loss of dependency comes to ₹ 3,750/-. The deceased Anil Kumar was 26 years old and, thus, multiplier of 17 has been rightly adopted. In this view of the matter, the total loss of dependency would stand computed at (₹ 3,750 X 12 X 17) = ₹ 7,65,000/-.

15. Since the compensation is being re-worked, it is legitimate on the part of the claimants to raise the contention that non-pecuniary damages have been awarded lower than what should have been granted. The award of ₹ 10,000/- each on account of loss of consortium, loss of love & affection, the funeral charges and loss of estate are enhanced to ₹ 1,00,000/-, ₹ 1,00,000/-, ₹ 25,000/- and ₹ 10,000/- respectively, the total non-pecuniary damages calculating to ₹ 2,35,000/- in view of *Rajesh & Ors. Vs. Rajbir Singh & Ors.* (supra).

16. In the result, the claimants in MACT Case No. 245/2010, (respondents No. 1 to 4 in MAC Appeal No. 489/2011) are held entitled to compensation in the sum of ₹ 10,00,000/- with interest as levied by

the tribunal.

17. Since the compensation awarded by the tribunal in this case was distributed amongst the claimants by specific amounts, a fresh apportionment needs to be ordered. Having regard to the facts and circumstances, it is directed that the first respondent (the widow Guddi Devi) will be entitled to 70% of the awarded amount and the remaining shall go to the three children in the ratio of 10 % each. The directions given by the tribunal as to the protection of the amounts awarded by it to be put in fixed deposit receipts, shall be followed.

18. By separate orders of 26.05.2011 in each of these appeals, the insurance company had been directed to deposit the entire amount(s) with upto date interest in terms of the impugned award(s) and out of the said deposit(s), 50% was ordered to be released to the respective claimants. The Registrar General is directed to ensure that the balance lying in deposit is released to the respective claimants in terms of this judgment, taking care to note that the award has been reduced in MAC Appeal No. 489/2011. Thus, the excess amount, lying in deposit will have to be refunded to the appellant insurance company.

19. The statutory deposit(s), if made, be refunded.

R.K. GAUBA
(JUDGE)

JANUARY 28, 2016
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