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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 23rd March, 2016

+ **MAC.APP. 359/2010**

BIRMATI

..... Appellant

Through Ms. Manjeet Chawla, Adv.

versus

ABDUL MAJID BHAT & ORS

..... Respondent

Through Mr. D K Sharma, Adv. for R-3

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Rajesh Kumar, a bachelor, 22 years old at the time and a self-employed person, died in a motor vehicular accident that occurred at about 6.40 AM on 07.10.1997 in the area of check-post Pathankot, Punjab involving truck bearing registration No.JKE 59 (offending vehicle) admittedly insured against third party risk with the third respondent (insurer). His parents (claimants) including the appellant-mother brought a claim petition (under Sections 166 and 140 of Motor Vehicles Act, 1988 (MV Act) registered as suit No.169/98 before the motor accidents claims tribunal (tribunal), impleading beside the insurer, the driver and owner/insured of the offending vehicle.

2. The tribunal held inquiry and on that basis, by judgment dated 21.10.2002, awarded compensation in the sum of ₹1,30,680/- with interest

at 9% per annum from the date of filing of the petition till realisation. The appeal at hand was filed seeking enhancement, in 2010 with application (CM No.10719/2010) for condonation of delay. The said application was allowed and the delay condoned by order dated 29.07.2013.

3. The grievances of the appellant relate to the computation of compensation. It is noted that in absence of better proof, the tribunal felt constrained to make an assessment of the earnings of the deceased on the basis of minimum wages payable to a matriculate (₹1,977/- per month). The tribunal added future prospects and then proceeded to calculate the loss of dependency to the extent of 1/3rd and thereafter awarded compensation only on that account, not taking into consideration any non-pecuniary heads of damages.

4. Whilst there can be no quarrel with the approach of the tribunal to the assessment of the income notionally at ₹1,977/-, the further calculations were erroneous.

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.

7. Since the deceased was self-employed, no element of future prospects is added. Going by the dictum in *Sarla Verma (supra)*, 50% is deducted towards personal & living expenses and, thus, the loss of monthly dependency comes to $(1,977 \div 2)$ ₹989/- per month.

8. The tribunal held, on the basis of evidence that the age of the claimant father was 52 years while that of the claimant mother was 45 years at the time of accident. The average age, thus, would be 49 years. In this view, the multiplier of 13 would be the correct benchmark for calculating the loss of dependency. Thus, the total loss of dependency is computed as $(989 \times 12 \times 13)$ ₹1,54,280/- rounded off to ₹1,55,000/-.

9. In *Madhu Marwaha v. Dal Chand* (FAO No.102/2011 dated 01.02.2016), this Court took the following view :

“Since the tribunal did not award any non-pecuniary damages, it is the duty of this court to add that element. Having regard to the date of the accident and the facts and circumstances of this case noted above, non-pecuniary damages in the sum of ₹50,000/- on account of loss of consortium, ₹50,000/- on account of loss of love & affection,

₹10,000/- on account of funeral expenses and ₹10,000/- on account of loss of estate are hereby added. The total compensation, thus, payable to the appellants comes to ₹5,15,000/-."

10. Having regard to the view taken in the said case, similar awards are made in this case. Thus, ₹50,000/- on account of loss of love & affection, ₹10,000/- on account of funeral expenses and ₹10,000/- on account of loss of estate are hereby added. The total compensation awardable in the case is, therefore, calculated as (1,55,000 + 70,000) ₹2,25,000/-.

11. The learned counsel for the appellant submits that the compensation awarded by the tribunal has already been received. Since the claimant father has died, it is directed that the entire enhanced portion of the compensation which, of course, shall carry interest and shall be payable to the claimant mother (appellant). The appeal was filed belatedly. In these circumstances, it will not be fair to burden the insurer with the liability of interest from the date of filing of the petition. In this view, it is directed that the enhanced portion of the compensation shall carry interest at 9% per annum from the date of filing of the appeal till realization.

12. The insurer is directed to deposit the amount payable to the appellant in terms of this judgment with the tribunal within 30 days of today whereupon it shall be released.

13. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

MARCH 23, 2016
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