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

Date of Decision: 7th April, 2016

\+ **MAC.APP. 568/2011**

NATIONAL INSURANCE CO LTD. ..... Appellant
Through: Ms. Neerja Sachdeva, Adv.

versus

KAMINE YADAV AND ORS. ..... Respondent
Through: Mr. Sanjay Khanna, Adv. for R-1 to 3

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. On 23.11.2007, the first to third respondents (claimants) preferred accident claim case (suit No.717/2008) under Sections 166 and 140 of Motor Vehicles Act, 1988 (MV Act) seeking compensation for death of Pawan Kumar Yadav in a motor vehicular accident that occurred on 01.10.2005 involving truck bearing No.HR 38C 1397 (the offending vehicle) statedly driven in rash manner by the fourth respondent, it being owned by the fifth respondent and admittedly insured against third party risk with the appellant insurance company (insurer). The motor accident claims tribunal (tribunal) upheld the case of the claimants that the accident and death had occurred due to rash driving of the offending vehicle and awarded compensation in the sum of Rs.7,90,200/- with interest at 7.5% per annum from the date of filing of the petition till realization calculating the award as under:

Loss of financial dependency	Rs.7,55,200/-
Loss of love and affection	Rs.10,000/-
Loss of consortium	Rs. 10,000/-
Funeral Expenses	Rs. 5,000/-
Loss to Estate	Rs. 10,000/-
Total	Rs.7,90,200/-

2. The insurance company which has been fastened with the liability, by appeal at hand, questions the computation of loss of dependency on the ground that future prospects were wrongly added to the minimum wages of Rs.3,926/- per month. It further contends that since the deceased was admittedly son of the owner of the truck, he was not a third party and, therefore, the liability is not covered.

3. The contention of the appellant on the first issue must be upheld. 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.

4. 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.

5. Thus, the loss of dependency is calculated without adding the element of future prospects. Since the deceased has left behind three dependent family members, 1/3rd is deducted towards personal & living expenses which renders the monthly loss at (3,926 x 2 ÷ 3) Rs.2,618/-. On the multiplier of 16, as correctly applied by the tribunal, the total loss of dependency comes to (2,618 x 12 x 16) Rs.5,02,656/-, rounded off to Rs.5,03,000/-.

6. It is, at the same time, noted that the awards under non-pecuniary heads of damages are highly inadequate. 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.

7. Thus, the total compensation payable in the case is computed as (5,03,000 + 2,50,000) Rs.7,53,000/-. 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.

8. The award is modified as above.

9. The second contention of the appellant must be rejected for the simple reason that the evidence shows that the deceased was travelling not merely as son of the owner of the vehicle but as person who was responsible for unloading the goods carried by it.

10. By order dated 03.06.2011, the insurance company had been directed to deposit the entire award with up-to-date interest with the Registrar General within the period specified. By order dated 07.12.2012, 50% of the said deposit was released.

11. The Registrar General is directed to calculate the shares payable to the claimants in terms of the above directions and release the same with proportionate interest in their favour in terms of the aforementioned direction. If there is any shortfall, the same shall be deposited by the insurance company with the Registrar General within 30 days of today. On the other hand, if excess has been deposited or released, the same shall be refunded.

12. Statutory deposit, if made, shall be refunded to the insurer.

13. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

APRIL 07, 2016
VLD