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

Date of Decision: 5th April, 2016

\+ **MAC.APP. 523/2013**

IFFCO TOKIO GENERAL INSURANCE COMPANY LTD.
..... Appellant
Through: Ms. Suman Bagga and Mr. Pankaj Gupta, Advs.

versus

SURENDER KUMAR AND ORS. ..... Respondent
Through: Mr. O P Mainnie, Mr. Manish Maini, Advs.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The first respondent (claimant) had suffered injuries in a motor vehicular accident that occurred on 25.11.2011 as a result of negligent driving of three wheeler scooter bearing registration No. DL-1RK-2991 (the offending vehicle) by its driver Gurcharan Singh (second respondent), the said vehicle being admittedly insured against third party risk with the appellant insurance company (the insurer) for the period in question. The claimant preferred an accident claim case under Sections 166 and 140 of Motor Vehicles Act, 1988 (MV Act) on 23.04.2009 before the motor accident claims tribunal (tribunal), which registered it as MACT case No.378/2009, impleading the driver and insurer of the offending vehicle in addition to the owner as respondents. The case was decided by the tribunal

by judgment dated 10.09.2012 awarding compensation in the sum of Rs.9,63,907/-, with interest at 9% per annum from the date of filing of the petition till realization, calculating it thus :

<u>Pecuniary damages (Special damages):</u>	
Loss of future income -------------------------	*Rs. 5,02,697/-*
Medical expenses ------------------------------	*Rs. 11,210/-*
Special diet expenses --------------------------	*Rs. 25,000/-*
Conveyance charges ---------------------------	*Rs. 25,000/-*
Future medical expenses ----------------------	*Rs. 2,00,000/-*
<u>Non-pecuniarv damages (General damages)</u>	
Pain, suffering, mental shock and trauma --	*Rs. 1,00,000/-*
Loss of amenities -------------------------------	*<u>Rs. 1,00,000/-</u>*
Total	*Rs. 963,907/-*

2. The insurer, having been fastened with the liability to pay has come up in appeal questioning the computation of compensation under the heads of loss of future income and future medical expenses. It is argued that the income of the claimant was notionally assessed (Rs.4,107/-) on the basis of minimum wages of a skilled person but future prospects to the extent of 50% were wrongly added thereupon. It is argued that the claimant, having suffered 40% functional disability, permanent in nature, the future loss of income should have been calculated only on the basis of notional income of Rs.4,107/-, though concededly on the multiplier of 17 (inasmuch as his age at the relevant point of time was 27).

3. 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 future loss of income is recomputed without the element of future prospects. On the functional disability to the extent of 40%, the loss of monthly income comes to (4107 x 40 ÷ 100) Rs.1,643/-. On the multiplier of 17, the total loss of future income comes to (1643 x 12 x 17) Rs.3,35,172/-.

6. Indeed, the award of Rs.2 lakhs towards future medical expenses has no legs to stand on. The claimant himself, in his affidavit (Ex.PW2/A), had stated (para 10) that future medical expenses would be to the tune of Rs.15,000/- to Rs.20,000/-. It appears the figure of Rs.20,000/- was wrongly read so as to taken as Rs.2 lakhs. Suitable correction needs to be made. Therefore, future medical expenses are reduced to Rs.20,000/-.

7. Adding the other components awarded by the tribunal, the total compensation in the case comes to (3,35,172 + 11,210 + 25,000 + 25,000 + 20,000 + 1,00,000 + 1,00,000) Rs.6,16,382/-, rounded off to Rs.6,17,000/-. Needless to add, the amount shall carry interest as levied by the tribunal. The award is modified accordingly.

8. By order dated 30.05.2013, the insurance company had been directed to deposit entire awarded amount with up-to-date interest with the Registrar General out of which 70% was allowed to be released. The Registrar General was further directed to keep the rest of the amount in the form of FDR with UCO Bank, Delhi High Court Branch initially for a period of six months to be renewed periodically.

9. The Registrar General is now directed to calculate the amount payable to the claimant in terms of the above directions and release the same with proportionate interest in his favour. 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 with statutory deposit, if made.

10. The appeal stands disposed of in above terms.

R.K. GAUBA
(JUDGE)

APRIL 05, 2016
VLD