$~9 & 10

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

Date of Decision: 10.05.2016

\+ MAC.APP. 525/2013 and CM No.9594/2014

UNITED INDIA INSURANCE CO LTD ..... Appellant

Through: Mr. P. Acharya, Advocate

versus

DHAN DEVI & ORS ..... Respondents

Through: Mr. Mohinder Malhotra, Adv. for R-1

\+ MAC.APP. 534/2013

UNITED INDIA INSURANCE CO LTD ..... Appellant

Through: Mr. P. Acharya, Advocate

versus

RAM BAHADUR SINGH & ORS ..... Respondents

Through: Ms. Manjeet Arya, Adv. for R-1 & 2

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. On 18.11.2003, Santosh Kumar and Vijay Singh @ Vijay Kumar, aged 21 years and 19 years respectively, both bachelors, were travelling in a

motor vehicle described as a rural transport vehicle bearing registration no.DL-1VA-2569 (RTV) when it met with an accident involving a container truck bearing registration no.HR-38A-2044 (truck) in the area around Blind School, opposite Lal Kuan. As a result of the injuries suffered, both of them died. Two accident claim cases were instituted in the Motor Accident Claims Tribunal (tribunal), one (suit no.738/2011/2004) by the parents of Santosh Kumar, filed on 18.03.2004 and the other (suit no.739/2011/2004) by the parents of Vijay Singh @ Vijay Kumar filed on 19.02.2004. In both the cases, it was alleged that the accident had occurred on account of the negligent driving of the truck by Waqil Ansari (third respondent in MACA 525/2013 and fourth respondent in MACA 534/2013). The truck admittedly is owned by M/s. Gemini Enterprises Model Pvt. Ltd. (second respondent in MACA 525/2013 and third respondent in MACA 534/2013). It was admittedly insured against third party risk for the period in question with the appellant insurance company (insurer). The said driver, owner and insurer of the truck were impleaded as party respondents before the tribunal in each case.

2. The tribunal held inquiry consolidating the said cases with certain other similarly placed claim cases stated to have arisen out of the same very accident. By separate judgments in the two cases with which these appeals are concerned, both rendered on 14.01.2013, the tribunal upheld the case of the claimants that the deaths had occurred due to the negligence on the part of the driver of the truck.

3. The tribunal thereafter proceeded to assess the compensation payable in each case. It awarded an amount of ₹4,60,960/- with interest at the rate of

9% p.a. from the date of filing of the petition till realization in the case relating to death of Santosh Kumar, calculating it thus :-

Loss of dependency	₹3,90,960/-
Funeral Expenses	₹10,000/-
Love & affection	₹1,00,000/-
Loss of Estate	₹10,000/-
Total	₹5,10,960/-
Less Interim Award	₹50,000/-
Balance payable sum	4,60,960/-

4. In the case relating to death of Vijay Singh @ Vijay Kumar, compensation in the sum of ₹5,20,360/- was granted with interest at the rate of 9% p.a. from the date of filing of the petition till realization for the period specified (i.e. excluding some period as specified in paragraph 21 of the judgment in that case, calculating it thus :-

Loss of dependency	₹4,50,360/-
Funeral Expenses	₹10,000/-
Love & affection	₹1,00,000/-
Loss of Estate	₹10,000/-
Total	₹5,70,000/-
Less Interim Award	₹50,000/-
Balance payable sum	₹5,20,360/-

5. In both the cases, the insurer was called upon to satisfy the awards and pay the compensation to the claimants.

6. By the appeals at hand, the insurer raises identical issues with regard to the judgments in the two cases. It argues that the question of negligence on the part of the driver of the truck was not strictly proved. It questions the computation of compensation on the ground that the income of the deceased persons having been assessed notionally on the basis of minimum wages, there was no occasion for addition of the element of future prospects thereto. It further argues that the multiplier of 18 has been wrongly adopted.

7. Having heard the learned counsel on all sides and having perused the records of the two cases, this court is of the view that the contention of the insurer in appeals on the issue of negligence must be rejected. It is not a case where the claimants have relied only on the certified copies of the record of the corresponding criminal case. The evidence adduced included the testimony of Const. Mahabir Singh (PW-4) who was posted in the Police Post Pul Prahlad Pur, PS Sangam Vihar within the jurisdiction of which the accident had occurred. He had accompanied the investigating police officer to the scene of the incident after intimation in this regard had been received in the police post. He described the scene of occurrence as found on arrival wherein the RTV was lying overturned. The truck had entered into a narrow street away from the road. The scene clearly depicted that the truck had reached upto the said narrow street on account of it having been driven in uncontrollable speed. The overhead wires including those meant for transmission of electrical energy had been broken and were lying scattered all over. The driver of the truck had fled away from the scene.

8. In the above facts and circumstances, negligence on the part of the driver of the truck is writ large on the record of the case. The principle of *res ipsa loquitur* squarely applies and, thus, the view taken by the tribunal upholding the case of the negligent driving of the truck having resulted in the two deaths does not call for any interference.

9. It is made clear from the perusal of the record of the two cases that the claimants in each case were unable to muster any clear evidence as to the nature of avocation of the deceased persons or their earnings. Thus, income was notionally assessed on the basis of minimum wages, in the case of Santosh Kumar at the rate of wages for unskilled worker and in the case of Vijay Singh @ Vijay Kumar on the basis of wages of skilled worker, the latter in view of the fact that there was evidence available that the said deceased Vijay Singh @ Vijay Kumar was trained in carpentry.

10. 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.

11. 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.

12. In the given facts and circumstances when the income was notionally assessed, there could not have been any addition on account of progressive rise.

13. It is well settled that in calculating the loss of dependency, the multiplier is to be chosen as per the age of the deceased or the claimants whichever is higher. [see *G.M. Kerela SRTC vs Susamma Thomas* (1994) 2 SCC 176; *U.P.S.R.T.C. vs Trilok Chandra* (1996) 4 SCC 362].

14. In the case of Santosh Kumar, the claim petition had been filed by both parents. The father of Santosh Kumar, however, died during the pendency and, thus, the claim petition was prosecuted to the logical end by his mother. As per the copy of the voter identity card of the mother (page 301 of the tribunal's record), she was 45 years old as on 01.01.1994. In this view, on the date of accident, she would be approximately 54 years old. Thus, the multiplier of 11 would apply.

15. In the case of Vijay Singh @ Vijay Kumar, copy of the ration card (PW1/E) which seems to pertain to the period prior to the accident was submitted and which reveals the age of the father and mother to be 40 years

and 35 years respectively. This would mean, 15 would be the correct multiplier for calculating the loss of dependency in this case.

16. Thus, the loss of dependency in the case of Santosh Kumar is computed as (₹2,784 / 2 x 12 x 11) ₹1,83,744/- rounded off to ₹1,85,000/-. In the case of Vijay Singh @ Vijay Kumar, the loss of dependency is calculated as (₹3,208 / 2 x 12 x 15) ₹2,88,720/- rounded off to ₹2,90,000/-.

17. It is noted that the tribunal awarded ₹1 Lakh in each case towards loss of love and affection and ₹10,000/- each towards funeral expenses and loss to estate. The awards under the funeral expenses and loss of estate are inadequate. Following the view taken in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshmamma* (2015) 9 SCC 150, these awards are increased to ₹25,000/- each.

18. In the result, the total compensation in the case of Santosh Kumar is computed as (₹1,85,000/- + 1,50,000/-) ₹3,35,000/-. In the case of Vijay Singh @ Vijay Kumar, the compensation is calculated as (₹2,90,000 + 1,50,000/-) ₹4,40,000/-.

19. Needless to add, the amounts already received under Section 140 of the M.V. Act shall be suitably adjusted and the balance shall carry interest as levied by the tribunal.

20. The awards are modified as above.

21. By similar orders passed in both these appeals on 31.05.2013, the insurance company had been directed to deposit the entire awarded amount with upto date interest with the Registrar General of this court, thereupon

80% was allowed to be released to the claimants, the balance kept in fixed deposit receipt with the UCO Bank, Delhi High Court Branch, New Delhi initially for a period of six months with provision for renewal. The Registrar General shall now calculate the amounts payable under the awards modified as above and release the same from out of the balance refunding the excess with statutory deposit, if made, to the insurer.

22. The appeals and the pending application are disposed of in above terms.

R.K. GAUBA
(JUDGE)

MAY 10, 2016
yg