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

Date of Decision: 27.05.2016

\+ MAC.APP. 533/2013 and CM No.3726/2014

SHRIRAM GENERAL INSURANCE CO. LTD ..... Appellant

Through: Mr.Sameer Nandwani, Advocate

versus

VIMAL JAIN & ORS ..... Respondents

Through: Mr. Navneet Goyal and Ms. Rupika Singh, Advocate for R-1 & 2

\+ MAC.APP. 1037/2014

VIMAL JAIN & ORS ..... Appellants

Mr. Navneet Goyal and Ms. Rupika Singh, Advocate

versus

SHRIRAM GENERAL INSURANCE CO. LTD ..... Respondent

Through: Mr.Sameer Nandwani, Advocate

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. On 18.06.2012, Ankit Jain, died as a result of the injuries suffered in a motor vehicular accident involving negligent driving of a truck bearing

registration no.HR-38M-3285 (offending vehicle), concededly insured against third party risk for the period in question.

2. By judgment dated 11.01.2013, on the accident claim case (suit no.730/2012) arising out of a detailed accident report (DAR), instituted by the first and second respondents (claimants), the Motor Accident Claims Tribunal (Tribunal) returned a finding that death had occurred due to negligent driving of the offending vehicle. This finding has attained finality.

3. The tribunal, on the basis of inquiry held, awarded compensation in the sum of Rs.9,76,258/- with interest at the rate of 7.5% p.a., the said amount being inclusive of Rs.25,000/- towards loss of love and affection, Rs.10,000/- each towards funeral charges and loss to estate and Rs.9,31,258/- towards loss of dependency.

4. The insurer of the offending vehicle (appellant in MACA No.533/2013) questions the award on account of loss of dependency taking exception to the factor of future prospects of increase in income. The claimants (appellants in MACA 1037/2014), on the other hand, are aggrieved by the inadequacy of non-pecuniary damages and rate of interest.

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. 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.

7. The deceased was 23 years old, a bachelor. The parents who filed the claim petition were unable to prove by any cogent evidence the nature of avocation or earnings. The tribunal, thus, assumed the income on the basis of minimum wages of a matriculate at Rs.8,528/-. In these circumstances, the element of future prospects of increase has to be kept out. The tribunal deducted one-half towards personal and living expenses and applied the multiplier of 14 having regard to the age of the claimant / mother , both correctly so. In these circumstances, the dependency loss is re-calculated as (Rs.8528/2 x 12 x 14) Rs.7,16,352/-, rounded off to Rs.7,17,000/-.

8. Following the view taken in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshmamma* (2015) 9 SCC 150, Rs.1 Lakh is awarded towards loss of love and affection and Rs.25,000/- each is awarded towards loss of estate and funeral expenses. Thus, total

compensation is re-calculated as (Rs.7,17,000/- + Rs.1,50,000/-) Rs.8,67,000/-.

9. Following the consistent view taken by this court, the rate of interest is increased to 9% p.a. from the date of filing of the petition till realization. [see judgment dated 22.02.2016 in MAC.APP. 165/2011 *Oriental Insurance Co Ltd v. Sangeeta Devi & Ors*.].

10. The award is modified accordingly.

11. By order dated 31.05.2013 in MACA 533/2013, the insurance company had been directed to deposit the entire awarded amount with upto date interest within the period specified, from which 70% was allowed to be released, the balance kept in fixed deposit receipts. Registrar General shall now calculate the amount payable to the claimants in terms of the modified award and release the balance from the amount retained in deposit refunding excess, if any, to the insurer with statutory deposit, if made. Conversely, if any amount payable as compensation remains outstanding, the insurer will be obliged to deposit the same with the tribunal within 30 days of this judgment, making it available to be released to the claimants.

12. The appeal and the pending application are disposed of in above terms.

(R.K. GAUBA)
JUDGE

MAY 27, 2016
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