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

Date of Decision: 26.04.2016

\+ MAC.APP. 479/2014

U.P. STATE ROAD TRANSPORT CORPORATION ..... Appellant

Through: Ms. Garima Prashad and Mr. Shadab Khan, Advocates

versus

VIJAY PAL ..... Respondent

Through

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. On the accident claim petition (suit no.53/2012) instituted on 17.03.2012, the Motor Accident Claims Tribunal (tribunal), by judgment dated 15.03.2014, awarded compensation in the sum of ₹9,09,700/- with interest at the rate of 9% p.a. in favour of the first respondent (claimant) for injuries and consequent disability suffered by him in a motor vehicular accident that occurred on 30.08.2011 involving bus bearing no.UP-84T-0717 of Uttar Pradesh State Road Transport Corporation (the appellant), driven by its employee Anil Kumar (the second respondent before the Tribunal), upholding the case of the appellant that the said accident had occurred due to negligent driving of the bus driver, calculating the compensation thus :

1.	Compensation towards pain and sufferings	₹80,000/-
2.	Loss of amenities and enjoyment	₹80,000/-
3.	Compensation for disfiguration and expectation of life	₹80,000/-
4.	Loss of earning capacity due to injuries	₹6,24,024/-
5.	Loss of earning of petitioner for 4 months @ 6420/- per month	₹25,680/-
6.	Compensation towards medical expenses (without bills)	₹10,000/-
7.	Compensation towards conveyance and special diet (without bills)	₹10,000/-

2. It is noted that the claimant had proved before the Tribunal by evidence, that as a result of the accident he had suffered crush injury (of the right hand) with amputation of thumb, the disability having been certified (Ex. PW2/1) to be permanent in nature and 60% in relation to the said limb.

2.1 The Tribunal held on the basis of the said assessment that the functional disability suffered was to the extent of 30% and on that basis calculated the loss of future income.

2.2 It may also be noted that no cogent proof as to the income was furnished and, thus, the Tribunal adopted the minimum wages (i.e. ₹6420/-) as the notional income and added 50% towards future prospects, calculating the loss of future income on the multiplier of 18 (the claimant was 24 years old on the relevant date).

3. The objection raised by the appellant is to the addition of future prospects.

4. 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.

5. 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.

6. Since there was no evidence of progressive rise in the income, future income loss has to be calculated only on the basis of notional income of ₹6420/- without any future prospects having been added. The functional disability being 30%, the loss of income comes to ₹1926/- (₹6420 x 30 / 100). On the multiplier of 18, the total future income loss is worked out as (₹1926 x 12 x 18) ₹4,16,016/-. Since the Tribunal had calculated the award under the said head at ₹6,24,024/-, the total compensation in the case has to be reduced by (₹6,24,024/- - ₹4,16,016/-) ₹2,08,008. Thus, compensation is reduced to (₹9,09,704/- - ₹2,08,008) ₹7,01,696/-, rounded off to ₹7,02,000. Needless to say, it shall carry interest as levied by the Tribunal.

7. The award is modified as above.

8. By order dated 26.05.2014, the appellant had been directed to deposit the entire awarded amount with upto date interest with the Registrar General of this court within the period specified. The Registrar General was directed to release 70% of the said deposit and hold back the rest for a period of one year in fixed deposit receipt with periodic renewal.

9. The Registrar General shall now recalculate the amount payable to the claimants and release the balance payable from out of the deposit retained, refunding the rest with statutory deposit, if made, to the insurer.

9. The appeal is disposed of in the aforesaid terms.

R.K. GAUBA
(JUDGE)

APRIL 26, 2016
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