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

Date of Decision: 26.04.2016

+ **MAC.APP. 578/2013**

NATIONAL INSURANCE CO LTD

..... Appellant

Through: Ms. Shantha Devi Raman and Mr.
Arbaaz Hussain, Advocates

versus

RAJ KUMAR & ORS

..... Respondent

Through: Mr. Rana Kunal, Advocate for R-1

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The first respondent (claimant) suffered injuries and amputation of right lower limb below knee as a result of motor vehicular accident that occurred on 25.02.2011 when the bicycle on which he was riding was hit by a bus bearing registration No.DL-1PB-6412 (offending vehicle), proved to have been driven in negligent manner by the second respondent (driver), it being admittedly owned by the third respondent (owner) and concededly insured against third party risk with the appellant insurance company (insurer).

2. The claimant filed an accident claim petition (suit no.135/2011) on 27.04.2011 before the Motor Accident Claims Tribunal (Tribunal) which held inquiry and, on that basis, passed judgment dated 31.01.2013, awarding

compensation in the sum of ₹14,51,405/- with interest at the rate of 9% p.a. in favour of the claimant calling upon the insurer to satisfy the award. The amount, thus awarded, includes ₹10,62,969/-, calculated as loss of future income on the basis of functional disability factored in to the extent of 80%, on the multiplier of 14 (the claimant was 43 years old on the relevant date) after notional assessment of his income at ₹6084/- (minimum wages) to which 30% was added towards future prospects.

3. By the appeal at hand, the insurer questions only the addition of future prospects in the above calculation.

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. Lalita 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 proof of income actually earned by the claimant and there is no evidence of any progressive rise in such income, the element of future prospects will have to be kept out.

7. The insurance company also argues that since the disability was certified (Ex. PX) to be 80% in relation to the right lower limb, the same could not have been taken as the functional disability. As per the averments and evidence of the claimant, he was engaged as a gardener. Though the Tribunal at one stage (para 17) observed that his disability is to be assessed to the extent of 100% functional disability while calculating the loss of future income, it factored in the disability only to the extent of 80%. This view finally taken in computing the loss of future income cannot be said to be wrong. Noticeably as per entry against serial no.17, (amputation below hip with stump not exceeding (12.70 cms) in length measured from tip of great trochanter) in part 2 of the first schedule appended to Employees' Compensation Act, 1923, such injury results in 80% loss of earning capacity.

8. Thus, the loss of future income is recalculated without adding the component of future prospects of increase. The monthly loss of income on the wages of ₹6084/- comes to $(₹6084 \times 80/100)$ ₹4868/-. The total loss on future income is computed as $(₹4868/- \times 12 \times 14)$ ₹8,17,824/-. Since the Tribunal had granted ₹10,62,969/- on this score, the total compensation awarded needs to be reduced by $(₹10,62,969/- - 8,17,824/-)$ ₹2,45,145/-.

The compensation awarded in the case is thus reduced to (₹14,51,405/- – ₹2,45,145/-) ₹12,06,260/-, rounded off to ₹12,07,000. Needless to add, it shall carry interest as levied by the Tribunal.

9. By order dated 11.07.2013, insurance company had been directed to deposit the entire awarded amount with upto date interest with the Registrar General within the period specified and out of the said deposit, 60% was allowed to be released. The balance sum was directed to be kept by the Registrar General in a fixed deposit receipt with provision for periodical renewal.

9.1 The Registrar General shall now calculate the amount payable to the claimant in terms of the award modified as above and release the same to him, refunding the balance with statutory deposit, if made, to the insurance company.

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

R.K. GAUBA
(JUDGE)

APRIL 26, 2016

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