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

Date of Decision: 02nd May, 2016

+ **MAC.APP. 463/2007 & CM no.10338/2007**

THE NEW INDIA ASSURANCE CO.LTD. Appellant

Through: Mr. Shoumik Mazumdar & Mr.
Pankaj Seth, Adv.

versus

SANGEETA BHARDWAJ AND ORS. Respondents

Through: None.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Sanjeev Bhardwaj, then aged 32 years, concededly self employed in a business, died as a result of injuries suffered in a motor vehicular accident that occurred on 25.06.1999, involving negligent driving of vehicle bearing registration no.UP-12A-1947 (the offending vehicle), admittedly insured against third party risk with the appellant/insurance company for the period in question. His wife, two children and mother instituted an accident claim case (suit no.160/2000) on 23.02.2000 seeking compensation under Sections 166 & 140 of the Motor Vehicles Act, 1988 (the MV Act) impleading the insurer as one of the respondents, in addition to driver and owner of the offending vehicle. Upon inquiry, the tribunal found, by judgment dated

24.04.2007, that the case of death on account of negligent driving on account of offending vehicle has been brought home. It assessed compensation in the sum of ₹7,60,000/- which includes loss of dependency worked out as ₹7,14,000/-, besides ₹5,000/- towards funeral expenses and ₹20,000/- towards loss of love & affection and loss of consortium. The compensation was awarded at the rate of 8% per annum from the date of filing of the petition till realization and the insurance company was directed to pay.

2. The insurance company, by appeal at hand, questions the calculation of dependency loss.

3. It is noted that the claimants had relied upon income tax return (ITR) for the assessment year 1998-99 (Ex.PW1/A) submitted with the affidavit of the first respondent (page 59-61 of the tribunal's record). The ITR would show that the deceased was earning livelihood in the form of profits from business which were ₹42,310/- for the assessment year 1998-99. As against the said income he had paid income in the sum of ₹300/-. It, however, proceeded to add future prospects and calculated the loss of dependency on the assumed income of ₹5250/- and applied the multiplier of 17, after deducting one third towards loss of love & affection. It is the addition of element of future prospects which is the bone of contention raised by the appeal at hand, besides the multiplier of 17 which, it is submitted, should have been 16.

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 the deceased was self-employed and the evidence of the claimants would not show any progressive rise, the element of future prospects has to be kept out. Similarly, per the ruling in *Sarla Verma (supra)*, the multiplier of 16 would apply. It is also noted that the deduction towards personal and living expenses could not have been one fourth as the number of dependants are four.

7. Therefore, the loss of dependency is recalculated as $(3500 \times 3/4 \times 12 \times 16)$ ₹5,04,000/-. The accident had occurred on 25.06.1999. Following the view taken in a case FAO 102/2001, Madhu Marwaha & Anr. vs. Dal Chand & Anr. decided on 01.02.2016, non-pecuniary damages in the sum of ₹50,000/- each on account of loss of consortium and loss of love & affection and ₹10,000/- each towards loss of estate and funeral expenses are added. In the result, the total compensation payable in the case comes to $(5,04,000 + 1,20,000)$ ₹6,24,000/-.

8. It is noted that the rate of interest awarded by the tribunal 8% per annum is on the lower side. Following the consistent view taken by this Court [see judgment dated 22.02.2016 in MAC.APP. 165/2011 *Oriental Insurance Co Ltd v. Sangeeta Devi & Ors.*], the rate of interest is increased to 9% per annum from the date of filing of the petition till realization.

9. The tribunal awarded ₹1,00,000/- each to the second, third and fourth respondents, the balance being payable to the first claimant (first respondent). By order dated 03.08.2007, the insurance company had been directed to deposit 60% of the awarded amount with accrued interest which was allowed to be released to the claimant. In the given facts and circumstances where the award has been reduced, it is directed that the share of second to fourth respondents shall be restricted to what has already been received by them under the above said order, the entire balance now being payable to the first respondent (the first claimant) alone.

10. The insurance company shall satisfy the balance of the award in terms of the modification ordered above by requisite deposit with the tribunal within 30 days for the same to be released to the first claimant.
11. The statutory deposit, if made, shall be refunded.
12. The appeal (with application) are disposed of in above terms.

MAY 02, 2016
ssc

R.K. GAUBA
(JUDGE)

