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

Date of Decision: 13.05.2016

\+ MAC.APP. 492/2014

THE ORIENTAL INSURANCE CO LTD ..... Appellant

Through: Mr. J.P.N. Shahi, Advocate

versus

RANI DEVI & ORS ..... Respondents

Through

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Ranjeet Mehta, aged 27 years, died as a result of the injuries suffered in a motor vehicular accident that occurred on 20.01.2007 involving negligent driving of a truck bearing registration no.HR-38K-6304 (offending vehicle) admittedly insured against third party risk for the period in question with the appellant insurance company (insurer). The dependent family members of Ranjeet Mehta, first to fifth respondent (claimants), instituted an accident claim case (suit no.571/11) on 11.04.2007 seeking compensation under Sections 166 and 140 of the Motor Vehicles Act, 1988 (M.V. Act). In

the said case, besides the insurer, driver and owner of the offending vehicle were also impleaded as parties.

2. The tribunal, upon inquiry, by judgment dated 18.02.2014, upheld the case of the claimants of death having occurred due to negligence on the part of the driver of the offending vehicle and awarded compensation in the sum of Rs.9,95,104/- with interest at the rate of 9% p.a. from the date of filing of the petition till realization. The said amount includes Rs.7,60,104/- towards loss of dependency besides Rs.1 Lakh each towards loss of love and affection and loss of consortium, Rs.25,000/- towered funeral expenses and Rs.10,000/- towards loss of estate. For calculating the loss of dependency, in absence of clear proof, the tribunal assumed Rs.3312/- p.m. as the income on the basis of minimum wages payable to a matriculate (at the relevant point of time), applied the multiplier of 17 (rightly so) with deduction of 1/4th towards personal and living expenses (correctly so done) but after adding 50% towards future prospects.

3. By the appeal at hand, the insurer which has been burdened with the liability to pay raises only one issue, namely, that since the income was notionally assessed and there was no evidence of regular income with progressive rise, the element of future prospects could not have been added.

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.

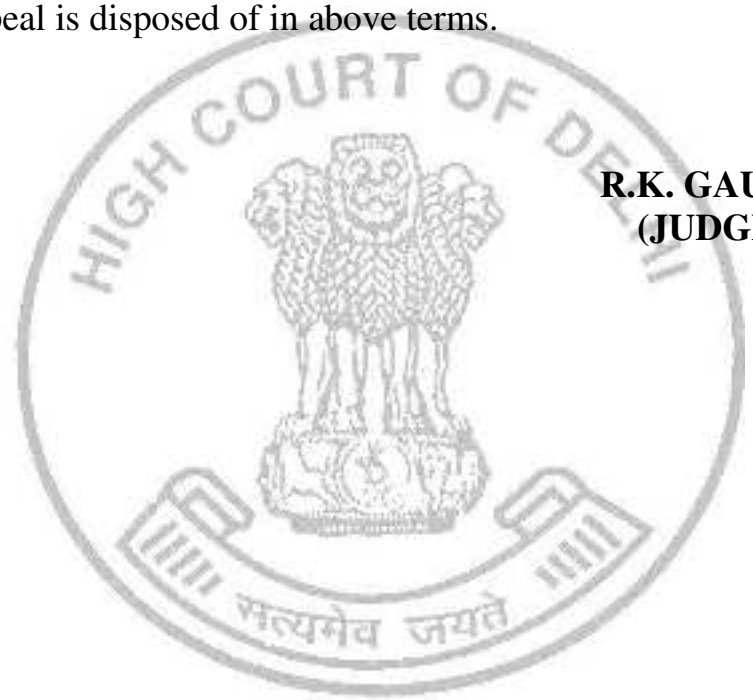
5. Against the above backdrop, by judgment dated 22.01.2016 passed in MAC Appeal No. 956/2012 (*Sunil Kumar v. Pyar Mohd.*), this Court has found it proper to follow the view taken earlier by a learned single judge in MAC Appeal No. 189/2014 (*HDFC Ergo General Insurance Co. Ltd. v. Smt. Lalta Devi & 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. In the above facts and circumstances of the case, the contention of the insurer against future prospects must be accepted. Thus, the dependency loss is recalculated as (3312 x 3/4 x 12 x 17) ₹ 5,06,736/-, rounded off to ₹ 5,07,000/-.

7. It is noted that the award of ₹ 10,000/- towards loss to estate is inadequate. Having regard to the view taken in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshmamma* (2015) 9 SCC 150, the said amount is increased to Rs.25,000/-. Thus, the total compensation in the case comes to (Rs.5,07,000 + Rs.2,50,000) Rs.7,57,000/-. The award is modified accordingly. It shall carry interest as levied by the tribunal.

8. By order dated 26.05.2014, the insurance company had been directed to deposit the entire awarded amount with upto date interest, from which 60% was allowed to be released, the balance kept in fixed deposit receipt with UCO Bank, Delhi High Court Branch, New Delhi. The Registrar General shall calculate the amount payable to the claimants under the modified award and release the balance from the amounts deposited refunding excess with statutory deposits, if made, to the insurer.

9. The appeal is disposed of in above terms.



R.K. GAUBA
(JUDGE)

May 13, 2016
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