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

Date of Decision: 28th March, 2016

+ **MAC.APP. 548/2013**

UNITED INDIA INSURANCE CO. LTD. Appellant

Through: Ms. Suman Bagga, Adv.

versus

KAMLA & ORS. Respondents

Through: Mr. Anshuman Bal, Adv. for R-1 to 4.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Satpal (born on 25.10.1958), working as a labourer in the department of Deputy Conservative of Forests (West Division) of the government of NCT of Delhi, suffered injuries in a motor vehicular accident that occurred on 17.10.2009 involving a motorcycle bearing registration no.DL-4SBN-3775 (the offending vehicle), which was admittedly insured against third party risk with the appellant/insurance company (the insurer) and died in the result. His widow and children brought a claim case (MACP no.317/2009) before the motor accident claims tribunal (the tribunal) on 12.12.2009 seeking compensation under Section 166 of the Motor Vehicles Act, 1988 (the MV Act), impleading, besides the insurer, the driver and the owner of the offending vehicle. The tribunal, after inquiry, awarded compensation in

the sum of ₹14,11,432/- with interest at the rate of seven & half (7.5) percent from the date of filing of the petition till realization, calculating the said award as under:

<i>Loss of dependency (10,276x11x12)</i>	<i>₹13,56,432/-</i>
<i>Loss of love and affection</i>	<i>₹ 25,000/-</i>
<i>For funeral expenses</i>	<i>₹ 10,000/-</i>
<i>Loss of estate</i>	<i>₹ 10,000/-</i>
<i>Loss of consortium</i>	<i>₹ 10,000/-</i>
<i>Total</i>	<i>₹14,11,432/-</i>

2. The insurance company, having been directed to satisfy the award, has come up in appeal questioning the computation of compensation, its prime contention being that the element of future prospects was wrongly added. *Per contra*, the claimants (first to third respondents herein) have submitted grievances that the loss of dependency was improperly calculated as the entire income proved through Sanjay Kumar (PW2) was not considered. It is also the grievances of the claimants that the award under non-pecuniary heads of damages is inadequate and that the rate of interest levied is on the lower side.

3. Through PW2, the claimants proved that the deceased Satpal was in regular employment of the government. He had joined in the post of labourer under the aforementioned department of the government on 05.12.1994 in the time scale of 750-12-870-14-1940. Over the period, his income had increased. At the time of his death, his basic salary was Rs.7210/- in addition to grade pay of Rs.1900/- (Ex.PW1/2), the total last emoluments being Rs.12,588/- per month. The evidence adduced clearly showed that the income of the deceased would have increased over the

period, *inter-alia*, on account of pay revisions and also regular annual increments. Since he was 51 years old at the time of death, under normal service rules, he would have continued to be in the government employ for at least another nine years. Given the salary structure in the government, his income would definitely have increased on account of annual increments and pay revisions even in future.

4. Undoubtedly, as per the dictum in *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121, the element of future prospects cannot be granted in cases where the deceased was over 50 years. But, pertinent to note, in *K. R. Madhusudhan & Ors. vs. Administrative Officer & Anr.*, (2011) 4 SCC 689, the Supreme Court, noting that in *Sarla Verma* (supra) it had been accepted that “*a departure can be made in rare and exceptional cases involving special circumstances*”, observed as under:-

“We are of the opinion that the rule of thumb evolved in Sarla Verma is to be applied to those cases where there was no concrete evidence on record of definite rise in income due to future prospects. Obviously, the said rule was based on assumption and to avoid uncertainties and inconsistencies in the interpretation of different courts, and to overcome the same.”

5. The case at hand is one, where concrete and irrefutable evidence showing the definitive trend of progressive rise in the income in future has been adduced. Thus, per the dictum in *Madhusudhan* (supra), the element of future prospects has to be factored in.

6. While holding a divergent view, a bench of three Hon’ble judges of the Supreme Court in case report as *Rajesh & Ors. v. Rajbir Singh & Ors.*,

(2013) 9 SCC 54, *albeit* referring to the category of those who are “*self employed or on fixed wages*” considered it just and equitable to allow future prospects of increase to the extent of 15% to be factored in, even in cases where the victim was in the age group of 50-60 years. In the considered view of this court, the same approach can be adopted even in the category of cases governed by the dictum in *Madhusudhan* (supra).

7. Since the tribunal added element of 30% of increase in the income to work out the loss of dependency, it needs to be recomputed with the future prospects restricted to the extent of 15%.

8. This court agrees with the submissions of claimant that there was no reason for transport allowance to be kept out of consideration. The said allowance was part of the regular income of the deceased and would have correspondingly resulted in savings. Thus, income on which loss of dependency has to be recalculated, after adding the element of 15% increase in future, is worked out as $(12,588 \times 115 \div 100)$ ₹14,476/-, rounded off to ₹14,500/-. Upon deduction of 1/3 towards personal and living expenses, the loss of monthly dependency comes to $(14,476 \times 2 \div 3)$ ₹9650/-. On the multiplier of 11 (the age of deceased was 51 years), the total loss of dependency is calculated as $(9650 \times 12 \times 11)$ ₹12,73,800/-.

9. There is merit in the grievance of the claimants that the awards under non-pecuniary heads of damages are inadequate. Following the view taken in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshamma* (2015) 9 SCC 150, compensation in the sum of

₹1,00,000/- each on account of love & affection and loss of consortium and ₹25,000/- each towards loss of estate and funeral expense are added.

10. Thus, the total compensation payable in the case comes to (12,73,800+2,50,000) ₹15,23,800/-, rounded off to ₹15,24,000/-. The award is modified accordingly.

11. Following the consistent view taken by this court, the rate of interest is increased to nine percent (9%) per annum from the date of filing of the petition till the realization. [see judgment dated 22.02.2016 in MAC.APP. 165/2011 *Oriental Insurance Co Ltd v. Sangeeta Devi & Ors.*]. Needless to add, the amount of interim award under Section 140 of the MV Act will have to be suitably adjusted.

12. The tribunal had apportioned ₹2,00,000/- each in favour of the second and third respondents (children of the deceased), giving the balance to the widow (first respondent). Having regard to the facts and circumstances, there is no need for any modification in the said apportionment.

13. By order dated 02.07.2013, the insurance company had been directed to deposit the entire awarded amount with up-to-date interest with the Registrar General within the period specified and out of the said deposit 50% was allowed to be released. The Registrar General shall now release the balance to the claimants in terms of the impugned award. The insurance company shall be liable to deposit more in view of the fact that award has been increased. It shall do so by deposit within 30 days of this judgment with the tribunal which shall deal with it as per the award modified above.

14. The statutory deposit, if made, shall be refunded.

15. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

MARCH 28, 2016
SSC

