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

Date of Decision: 23.05.2016

+ **MAC.APP. 678/2013**

PAYAL & ORS

..... Appellants

Through: Mr. Anshuman Bal, Advocate

versus

BALBIR SINGH & ORS

..... Respondents

Through: None

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Dinesh Kumar, then aged a few days over 30 years (born on 23.12.1979), a driver by profession, suffered injuries in a motor vehicular accident that occurred on 04.1.2010 involving negligent driving of a bus bearing registration no.CH-01G-5236 (offending vehicle) and died in the consequence. The dependent family members (appellants) instituted an accident claim case (MACP No.105/10) on 31.03.2010 seeking compensation under Sections 166 and 140 of the Motor Vehicles Act, 1988 (M.V. Act).

2. The Motor Accident Claims Tribunal (tribunal) held inquiry and by judgment dated 25.03.2013 upheld the case about death having occurred due to negligent driving of the offending vehicle. This finding has since attained finality as it was not challenged further.

3. By the said judgment, the tribunal awarded compensation in the sum of Rs.7,12,792/- with interest at the rate of 7.5% p.a. from the date of filing of the petition and directed the respondents to pay.

4. By the appeal at hand, the claimants seek enhancement of the compensation submitting that the income of the deceased was wrongly assumed at Rs.3953/- on the basis of minimum wages of an unskilled worker, ignoring the evidence that the deceased was engaged in earning his livelihood as a professional driver, his driving licence (Ex. PX) having been duly proved and that the element of 30% future prospects increase has been added which is on the lower side. The claimants also submit that the tribunal fell into error by assuming the age of the deceased as over 31 years. Having regard to the date of birth, the age should have been appropriately calculated at 30 years and on that basis the multiplier of 17 should have been applied. The claimants further submit that the non-pecuniary damages awarded by the tribunal and the rate of interest applied are on the lower side.

5. Though the claimants had pleaded that the deceased was earning Rs.9,000/- p.m., in absence of any formal proof about said earnings, there is no escape from making an assessment on the basis of minimum wages. The contention of the claimants about category of unskilled worker being proper, however, must be accepted. It having been proved that the deceased was

earning his livelihood as a professional driver, the minimum wages of a skilled worker (Rs.4377/- p.m.) should have been applied as the bench mark.

6. 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.

7. 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.

8. Since there is no formal proof of income or progressive rise in income, loss of dependency has to be calculated without the element of future prospects. The contention of the claimants about the multiplier is correct. Having regard to the age of the deceased, the dependency loss is

calculated on the multiplier of 17. In this view, it is recomputed as (Rs.4377 x 2/ 3 x 12 x 17) Rs.5,95,272/-, rounded off to Rs.5,96,000/-.

9. The contention about inadequacy of non-pecuniary damages is correct. Following the view taken in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshamma* (2015) 9 SCC 150, award of Rs.1 Lakh each towards loss of love and affection and loss of consortium and Rs.25,000/- each towards loss of estate and funeral expenses are added. Thus, the total compensation in the case comes to (Rs.5,96,000/- + Rs.2,50,000/-) Rs.8,46,000/-.

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

11. The award is modified accordingly.

12. The respondents are directed to satisfy the award modified as above by requisite deposit with the tribunal within 30 days of this judgment. It is noted that the tribunal had apportioned the compensation by specifying the amounts falling to the share of the three claimants. In the given facts and circumstances, it is directed that the entire enhanced portion of the compensation including on account of increase in rate of interest shall fall to the share of the first claimant (widow).

13. The appeal is disposed of in above terms.

(R.K. GAUBA)
JUDGE

MAY 23, 2016/yg