$~12 & 13

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

Date of Decision: 22nd April, 2016

\+ **MAC.APP. 180/2013**

THE MANAGER, RAJASTHAN STATE ROAD TRANSPORT CORPORATION

..... Appellant

Through: None

versus

MUNESH @ DIMPLE & ORS. ..... Respondents

Through: Mr. Navneet Goyal, Adv. for R-1 to 4

\+ **MAC.APP. 215/2015**

MUNISH DIMPLE @ DIMPLE & ORS ..... Appellants

Through: Mr. Navneet Goyal, Adv.

versus

THE MANAGER, RAJASTHAN STATE ROAD TRANSPORT CORPORATION & ORS (ICICI LOMBARD GEN INS CO LTD)

..... Respondents

Through: None

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Arvind Kumar died as a result of injuries suffered in a motor vehicular accident that took place on 04.12.2011 involving negligent

driving of bus bearing registration no.RJ 05P 1418 (offending vehicle) which had hit Maruti car bearing registration No.DL 9CL 6687 (the car) in which the deceased was travelling. The members of the family dependent on him (appellants in MAC.APP.No.215/2015) instituted an accident claim case (suit No.23/12) on 03.02.2012 under Sections 166 & 140 of Motor Vehicles Act, 1988 (MV Act) impleading, amongst others, Rajasthan State Road Transport Corporation (RSRTC) as the respondent, it being the registered owner of the offending vehicle. After inquiry by judgment dated 19.10.2012, compensation in the sum of Rs.16,58,538/- was awarded with interest at 7.5% per annum from the date of filing till realization, directing RSRTC (appellant in MAC.APP.No.180/2013) to pay. The compensation awarded includes Rs.16,13,538/- calculated towards loss of dependency, on the basis of minimum wages (Rs.8,152/-) payable to a skilled worker at the relevant point of time, to which future prospects of increase to the extent of 30% was added, on the multiplier of 17 (the age of the deceased being taken as 30 years), besides Rs.10,000/- each towards loss of consortium and funeral expenses and Rs.25,000/- towards loss of love and affection.

2. By its appeal (MAC.APP.180/2013), RSRTC questioned the computation of compensation mainly taking exception to the element of future prospects being added and the age of the deceased being assumed to be 30 years. *Per contra*, the claimants by their appeal (MAC.APP.No.215/2015) urge for the non-pecuniary damages and rate of interest to be increased.

3. At the hearing, counsel for RSRTC would not appear to argue. Having heard the learned counsel for the claimants and gone through the

record, this Court finds substance in the objection to the element of future prospects being 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 SCC166.

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 there was no proof as to the nature of occupation or earnings, the minimum wages of Rs.8,112/- have to be the basis on which the loss of dependency has to be worked out without the addition of future prospects. As the number of dependent family members was four, $1/4^{th}$ is deducted

towards personal and living expenses. Thus, the monthly loss of dependency comes to (8,112 x ¾) Rs.6,084/-.

7. The driving license (Ex.PW1/2) showed the date of birth to be 18.10.1981. In the absence of any proof to the contrary, the said document can be safely accepted as sufficient evidence as to the age of the deceased. Since the death had occurred on 04.12.2011, the deceased was just over 30 years old when the death occurred. Therefore, the multiplier of 17 has been correctly adopted.

8. Thus, the total loss of dependency comes to (6,084 x 12 x 17) Rs.12,41,136/- rounded off to Rs.12,42,000/-.

9. There is substance in the grievance as to the inadequacy of non-pecuniary damages. It is noted that the tribunal also failed to add any compensation on account of loss to estate. Following the view taken in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshmamma* (2015) 9 SCC 150, compensation in the sum of Rs.1 lakh each on account of loss of love & affection and loss of consortium and Rs.25,000/- each towards loss of estate and funeral expense are added.

10. Thus, the total compensation payable in the case comes to (12,42,000/- + 2,50,000/-) Rs.14,92,000/-. 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.

11. The award is modified accordingly.

12. By order dated 22.02.2013 in MAC.APP.No.180/2013, the appellant RSRTC had been directed to deposit the entire awarded amount with up-to-date interest with UCO Bank, Delhi High Court branch within four weeks and out of the said deposit 60% was allowed to be released to the claimants, the balance having been kept in fixed deposit receipts in the name of first claimant (the widow).

13. The Registrar General shall now calculate the shares payable to the claimants in terms of the above directions and release the same with proportionate interest in their favour in terms of the aforementioned directions. If there is any short fall, the same shall be deposited by the insurance company with the Registrar General within 30 days of today. On the other hand, if excess has been deposited or released, the same shall be refunded.

14. The statutory amount, if paid, shall also be refunded.

15. The appeals are disposed of in above terms.

R.K. GAUBA
(JUDGE)

APRIL 22, 2016
VLD