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

Date of Decision: 24th February, 2016

+ **MAC.APP. 502/2014 & CM No.19766/2015**
THE ORIENTAL INSURANCE CO LTD

..... Appellant

Through Mr. J P N Shahi, Adv.

versus

SANJEEV KUMAR & ORS

..... Respondent

Through Ms. Aparna Sharma, Adv.

+ **MAC.APP. 457/2015 & CM No.10130/2015**
RAJEEV KUMAR

..... Appellant

Through Ms. Aparna Sharma, Adv.

versus

THE ORIENTAL INSURANCE CO LTD & ORS

..... Respondent

Through Mr. J P N Shahi, Adv. for insurance
Mr. Sanjeev Goyal and Mr. Sangeeth
Mohan. K., Advs. for R-3

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Mr. Chandra Pal, statedly 48 years old and engaged in his own business, suffered death due to injuries sustained in a motor vehicular accident that occurred at about 6 AM on 30.08.2006 while travelling on the pillion of the motorcycle bearing No.DL 4S BJ 8083 (the motorcycle) driven

by his son-in-law Shusender Kataria, which was involved in a collision against a vehicle described as truck traula bearing No.HR 38L 9725 (the offending vehicle), opposite Maruti Suzuki Showroom near Maa Anand Mai Marg, Okhla Industrial Area, New Delhi. The offending vehicle was driven by the fifth respondent herein, and owned by the fourth respondent herein, it being concededly insured against third party risk with the appellant insurance company (in MAC.APP.502/2014) all of whom were impleaded as party respondents in the claim petition filed before the Motor Accident Claims Tribunal (the Tribunal) by the first and second respondents herein (registered as suit No.600/12/2008). It has been submitted that the claimants before the Tribunal were son and daughter respectively of the deceased, another son Rajeev Kumar impleaded by them as the fourth respondent (proforma party), he having come up with his own appeal (MAC.APP.No.475/2015) to question apportionment of the compensation that was awarded.

2. The Tribunal awarded compensation in the sum of ₹8,61,200/- with interest at 9% per annum from the date of filing of the petition till realization and apportioned ₹2 lakhs each in favour of the second respondent Neha Kataria (daughter) and third respondent Rajeev Kumar (the second son), making over the balance with proportionate interest to the first respondent Sanjiv Kumar (son).

3. The impugned judgment shows that the Tribunal calculated the compensation as under:

S.No.	Description	Amount
1	Loss of Estate	Rs.8,11,200/-
2	Funeral Expenses	Rs.25,000/-

3	Love & Affection	Rs.25,000/-
	Total	Rs.8,61,200/-

4. In calculating the loss of estate, the Tribunal followed the view taken by a learned Single Judge of this Court in the judgment in *Keith Rowe v. Prashant Sagar* MAC.APP.No.601/2007 decided on 15.01.2010. The claimants had proved income tax return (ITR) for the assessment year 2006-07 (Ex.PW2/4), indicating the total income from business accruing to the deceased to be ₹1,31,450/-. The ITR has been wrongly referred to as a document 'mark A' in the impugned judgment. It appears that the Tribunal failed to note that it had been properly proved. The duly proved ITR shows that it was submitted by the deceased himself on 24.08.2006. It is, thus, a document on which conclusions as to income can be safely drawn. Though the income declared in the said ITR showed ₹1,31,450/- as the gross income, the Tribunal assessed the monthly income at ₹12,000/- per month. The counsel for the claimants fairly concedes that there is no basis to such assumption made by the Tribunal. Taking the annual income at ₹1,31,450/-, the loss to estate has to be calculated in terms of judgment in *Keith Rowe* (supra).

5. The Tribunal added the element of 30% increase towards future prospects. The insurer is aggrieved on this count.

6. In the case reported as *Sarla Verma & Ors. v. 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 it is own case of claimant that the deceased was a self-employed person, the element of future prospects cannot be added. The dependants included the elder son aged 32 years, the second son aged 29 years and married daughter aged 26 years. Having regard to the facts and circumstances, the loss of dependency is to be taken to the extent of 1/3rd only. Thus, the total loss to estate on the multiplier of 13, as adopted by the Tribunal, comes to $(1,31,450 \times 1/3 \times 13)$ ₹5,69,616.69, rounded off to ₹5,69,620.

9. There is substance in the submissions of the counsel for the claimants that the award on account of loss of love & affection at ₹25,000/- is inadequate. Following the view taken in *Rajesh v. Rajbir* (supra) this needs to be enhanced to ₹1 lakh. Thus, adding the non-pecuniary damages of ₹1

lakh on account of loss of love & affection and ₹25,000/- towards funeral expenses, the total compensation payable in the case comes to (5,69,620 + 1,25,000) ₹6,94,620/-.

10. The compensation is reduced to ₹6,94,620/-. It shall carry interest at 9% per annum from date of petition till realisation.

11. Rajeev Kumar, the second son of the deceased is in appeal (MAC.APP.No.457/2015) to question the apportionment, his grievance being that the loss to estate has to be evenly distributed. He refers to the judgment in *Keith Rowe* (supra). Indeed, there is no reason why there should be any discrimination amongst the three children of the deceased, each of whom was grown up, self-reliant and well settled in life. Therefore, the directions as to the apportionments made by the Tribunal in the impugned judgment need to be modified. It is directed that instead of the distribution of the compensation as directed by the Tribunal, the same shall be payable in equal proportions to the three claimants mentioned above.

12. By order dated 26.05.2014, in MAC.APP.No.502/2014, the insurance company had been directed to deposit the entire award with up-to-date interest with the Registrar General within the period specified and out of such deposit 70% was allowed to be released to the respective claimants, the balance having been retained in fixed deposit receipt with UCO Bank, Delhi High Court Branch, New Delhi initially for a period of one year to be renewed periodically. The Registrar General is directed to now calculate and release the shares payable to the three claimants in terms of the award modified as above, suitably adjusting the amounts released earlier. The balance lying in deposit, in excess of the liability of the insurance company, shall be refunded with statutory deposit, if made.

13. Both the appeals are disposed of in above terms.

R.K. GAUBA
(JUDGE)

FEBRUARY 24, 2016/VLD

