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

Date of Decision: 02nd May, 2016

\+ **MAC.APP. 608/2013**

RELIANCE GENERAL INSURANCE CO LTD ..... Appellant

Through: Mr. A. K. Soni, Adv.

versus

SMT SUMAN & ORS ..... Respondents

Through: Ms. Himani Bhatnagar, Adv. for Mr. Uday Bir Singh Brar, Adv. for R-1 to 5.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. On 31.07.2011, Gokul Ram, aged 25 years suffered injuries in a motor vehicular accident that occurred involving a truck bearing registration no.HR-61A-3034 (the offending vehicle) and died in the consequence. An accident claim case (MACT case no.393/2011) was instituted on 14.12.2011 by the first to fifth respondents (the claimant), they being the dependant family members of the deceased. In the claim petition, the appellant/insurance company (the insurer) was impleaded as respondent, in addition to driver and owner of the offending vehicle. The tribunal upheld the case of the claimants holding the driver negligent in driving of the offending vehicle and proceeded to award compensation in the sum of

₹17,34,500/- with interest at the rate of nine percent (9%) per annum in favour of the claimants directing the insurer to pay. The said amount includes ₹10,000/- each towards funeral expenses, loss of estate and loss of consortium and ₹1,00,000/- towards loss of love, company & affection etc. besides ₹25,000/- towards loss of gratuitous services, in addition to ₹15,79,500/- towards loss of dependency. The last component has been calculated accepting the evidence led by the first respondent (the wife) appearing as PW1, proving the salary certificate showing the income of deceased from private employment to be ₹6500/-. The tribunal applied the multiplier of 18, deducting one fourth towards personal and living expenses, both rightly so; though after having so concluded, it proceeded to add the element of future prospects increase by 50%, observing, *inter-alia*, that the deceased was in a government job.

2. The insurer, by appeal at hand, questions the computation of loss of dependency on the ground that the future prospects could not have been added.

3. 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.

4. 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.

5. The tribunal wrongly assumed that the deceased was in government job. The evidence shows that he was working on a fixed salary. In absence of any proof of progressive rise in the income, future prospects have to be kept out. Thus, loss of dependency is recalculated as (6500x3/4x12x18) ₹10,53,000/-.

6. It is noted that the non pecuniary damages are not in accord with the settled principles. Following the view taken in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshmamma* (2015) 9 SCC 150, the award of ₹1,00,000/- each on account of loss of love & affection and loss of consortium and ₹25,000/- each towards loss of estate and funeral expense are added.

7. Thus, the total compensation payable in the case is computed as (10,53,000+2,50,000) ₹13,03,000/-.

8. The award is modified accordingly. Needless to add, it shall carry interest as levied by the tribunal.

9. The tribunal had apportioned the compensation awarded by specifying the amounts falling to the share of different claimants. By order dated 12.07.2013, the insurance company had been directed to deposit the entire awarded amount with the Registrar General within the period specified and upon such deposit made, 80% was allowed to be released in terms of the impugned judgment, the balance kept in fixed deposit receipt initially for a period of six months to be renewed periodically.

10. In the given facts where the award has been modified, it is directed that the amounts already released in favour of the second to fifth respondents shall be treated as their shares. The balance, if any, under the modified the award shall be payable only to the first respondent (the wife).

11. The Registrar General shall recalculate the amount under modified award. If any excess has been released, the same shall be liable to be refunded. Conversely, the amount lying in balance shall be released as above.

12. The amount in excess with statutory deposit shall be refunded.

13. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

MAY 02, 2016
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