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

Date of Decision: 05th May, 2016

\+ **MAC.APP. 617/2013**

NEW INDIA ASSURANCE CO LTD
..... Appellant
Through Mr. Sameer Nandwani, Adv.

versus

SATYAMAN PATEL & ORS
..... Respondent
Through None

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Rajnish Patel, a bachelor, 19 year old non-matriculate working as a tailor, died in motor vehicular accident that occurred on 17.01.2012 due to negligent driving of motor vehicle bearing registration No.UP 61 P 1473 (offending vehicle). Accident claim case (suit No.38/12) was instituted on 21.03.2012 under Sections 166 and 140 of Motor Vehicles Act, 1988 (MV Act) by his father (first respondent) before the motor accident claims tribunal (tribunal), impleading the appellant insurance company (insurer) as one of the respondents, it admittedly being the insurer against third party risk in respect of the offending vehicle, in addition to the driver and owner thereof. The tribunal after inquiry, by judgment dated 06.04.2013, upheld the case of death having been caused due to negligent driving of the

offending vehicle which finding has attained finality. It awarded ₹7,81,070/- as compensation with interest @ 9% per annum in favour of the claimant, this being inclusive of ₹25,000/- towards loss of love & affection, ₹10,000/- towards funeral expenses besides ₹7,46,070/- towards loss of dependency calculated with the multiplier of 13 (having regard to the age of the claimant) on the basis of income notionally assessed at ₹7,358/-, after adding the element of future prospects to the extent of 30%. The addition of future prospects is the cause of grievance in the appeal. Despite notice the claimant has not appeared to contest the case.

2. Arguments have been heard. Record perused.

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. Since income was notionally assessed, the loss of dependency has to be worked out without adding the element of future prospects. Thus, it is recomputed as (7,358 ÷ 2 x 12 x 13) ₹5,73,924/- rounded off to ₹5,80,000/-.

6. It is noted that the non-pecuniary compensation is on the lower side. 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 ₹1 lakh on account of loss of love & affection and ₹25,000/- each towards loss of estate and funeral expense are added. Thus, the total compensation payable in the case is computed as (5,80,000 + 1,50,000) ₹7,30,000/-.

7. The award is modified as above. Needless to add it shall carry interest as levied by the tribunal.

8. By order dated 16.07.2013, the insurance company had been directed to deposit the entire awarded compensation with upto date interest with the Registrar General of this Court within the period specified and out of such deposit, eighty percent (80%) was allowed to be released to the claimants in terms of the impugned judgment, the balance having been kept in fixed deposit receipt with the UCO Bank, Delhi High Court Branch, New Delhi, initially for a period of six months to be renewed periodically. The

Registrar General shall recalculate the amount payable to the claimant and release the same from the balance, refunding the excess, if any, to the insurer.

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

10. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

MAY 05, 2016
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