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

Date of Decision: 18th February, 2016

+ **MAC.APP. 629/2014**

NATIONAL INSURANCE CO LTD

..... Appellant
Through Mr. Pradeep Gaur and Mr. Amit
Gaur, Advs.

versus

SHILOO & ORS

..... Respondent
Through Mr. Karamveer Singh and Mr. Vijay
Pal Bidhuri, Advs.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. By judgment dated 04.03.2014, the appellant insurance company was directed to indemnify the person insured (the seventh respondent), registered owner of the car bearing No.DL 2CN 7388 (the offending vehicle) which was involved in an accident against car bearing No.DL 2CM 2148 (the car) in which Devi Prasad was travelling resulting in his death. On the petition brought by the dependants of Devi Prasad (first to fifth respondents herein) registered as petition No.17/2013, the tribunal held the driver of the offending vehicle to be responsible on account of negligent driving, thus,

holding the registered owner (the seventh respondent) vicariously liable to pay compensation assessed in sum of ₹19,64,800/-.

2. The issue raised by the insurance company is that the driver of the car was also equally negligent in that he had let the car remain on road even while there was a flat tyre and efforts were being made to locate a tyre repair shop in the vicinity.

3. The issue raised before the Tribunal was considered and the contention of the insurance company rejected by the Tribunal through following observations in the impugned judgment :

“PW-1 has stated that on 15.11.12 the deceased alongwith petitioner no.1, 2 and 3 and other relatives were coming back to his residence after Goverdhan Parikarma and were travelling in a car bearing no. DL 2C M 2148 (Accent) and at about 2.15 AM when they reached in the area of Village Ramnikhera on NH-2, within the jurisdiction of PS Sadar, Palwal, Haryana the left front tyre of the car punctured and the driver of the car parked the car on the road side and tried to locate tyre puncture shop but he could not find it being midnight as such the deceased and others sat in the car. In the meantime, the offending car bearing no. DL 2C N 7388 being driven by the respondent no.1 in a rash and negligent manner came at a high speed from Mathura side i.e. wrong side and hit the car in which the deceased was sitting. Due to the forceful impact of the offending vehicle, the Accent car came in between the road and the deceased suffered fatal injuries. He was taken to Govt. Hospital, Palwal by the police in Ambulance where he succumbed to the injuries and died in the hospital. The postmortem of the deceased was conducted. A case vide FIR no. 467/12 u/s 279/337/304-A IPG was registered at police station Sadar, Palwal against the respondent.

During her cross-examination she deposed that she was also sitting in the same car at the time of accident. They had taken the vehicle on hire.

The tyre of the said vehicle had got punctured and the driver of the car parked the car on the side of the road. She admitted that no glow sign was affixed. However, the head lights of the vehicle were blowing at the time of accident. In the instant case the petitioners have filed the copy of the criminal record. Perusal of it shows that the case was registered on the statement of Ram Avtar who was also present in the Accent car bearing no.DL 2C M 2148 at the time of accident. He has deposed the same facts as deposed by PW-1 in her testimony.

Hon'ble High Court of Delhi in case titled "National Insurance Company Limited V/s Pushpa Rana" reported as 2009 ACJ 287 has held that whenever criminal proceedings are placed on record on completion of investigation by the police, then that in itself is sufficient proof of the negligent driving of driver of the offending vehicle involved in the accident.

For the foregoing discussions, it is established that Devi Prasad died of the injuries sustained in an accident took place on 15.11.12 at about 2.15 AM on account of rash and negligent driving of vehicle bearing no. DL 2C N 7388 (Maruti Zen Car) by respondent no.1, owned by respondent no.2 and insured with respondent no.3/insurance company."

4. The counsel for the insurance company argues that it is inconceivable that headlights of the car would have been switched on, as stated by PW1 in her testimony, because that would have exhausted the battery. The argument is wholly illogical. There is no basis to the submission that when a car is stranded on road requiring repairs, the person in charge of the motor vehicle would not resort to using the headlights or caution sign because that would erode the life of the battery of the vehicle. The Tribunal rejected contention of the insurance company for sound reasons. As pointed out by the counsel for the claimants, site plan (mark X1) prepared by the investigating police officer proved during the inquiry shows that the car was stationary not in the middle of road but on the road side.

5. The second contention of the insurance company is that even though the income of the deceased assessed on the basis of minimum wages (Rs.8,008/- per month) prevalent at the time, inasmuch as no proof of the avocation or the income was adduced, the tribunal fell into error by adding element of future prospects of increase to the extent of 50%.

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 SCC166.

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. This applies to the matter at hand because the claimant here pleaded about gainful employment at a fixed salary and has

not led any evidence showing the salary was subject to any periodic increase.

8. In above facts and circumstances, the loss of dependency needs to be recomputed. The claimants being five in number, $\frac{1}{4}^{\text{th}}$ requires to be deducted on account of personal and living expenses. Thus, the monthly loss of dependency is calculated as $(8008 \times 3 \div 4)$ Rs.6006/-. The deceased was more than 30 years of age but had not completed the age of 31 years. The tribunal adopted the multiplier of 16 which is not correct. Having regard to the dictum in *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121, the multiple of 17 would have been the correct one. Thus the loss of dependency is calculated as $(6,006 \times 12 \times 17)$ Rs.12,25,224/- rounded off to Rs.12,26,000/-. Adding the non-pecuniary damages totaling to Rs.2,35,000, the total compensation is calculated as Rs.14,61,000/-.

9. In above facts and circumstances, the award of compensation is reduced to Rs.14,61,000/- (Rupees Fourteen Lakhs and Sixty One thousand only). It shall carry interest as levied by the tribunal. The tribunal had awarded Rs.2 lakhs each to the children (second and third respondents) and Rs.1 lakh each to the parents (fourth and fifth respondent), awarding the balance to the widow (first respondent). Since the compensation has been reduced, the share of the children (second and third respondents) is also reduced to Rs.1 lakh each, while maintaining the share apportioned to the parents, the balance being payable to the widow (first respondent), to be disbursed and protected as per the directions of the Tribunal in the impugned judgment.

10. By order dated 16.07.2014, the insurance company had been directed to deposit Rs.10 lakhs with the Tribunal which was allowed to be released. The appellant insurance company is now directed to deposit the balance with the tribunal. It shall release it in terms of the modification as ordered above.
11. The statutory deposit, if made, shall be refunded.
12. The appeal is disposed of in above terms.
13. Tribunal's record be returned.

FEBRUARY 18, 2016
VLD

R.K. GAUBA
(JUDGE)

