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

Date of Decision: 6th April, 2016

+ **MAC.APP. 671/2014**

THE ORIENTAL INSURANCE CO. LTD Appellant

Through: **Mr. Manoj Bhandari, Adv.**

versus

MOHD. AKHTAR AHMED & ORS Respondents

Through: **None.**

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Mohd. Akram, a bachelor, aged 24 years, died in a motor vehicular accident that occurred at 9 a.m. on 05.02.2009 involving rash driving of motor vehicle described as radio taxi (car) bearing registration no. DL 1RY 3144, which was admittedly insured against third party risk with the appellant insurance company (insurer). His parents (first and second respondents) brought a claim petition (suit no. 161/2009) on 13.04.2009 before the motor accident claims tribunal (the tribunal) impleading the insurer, driver and owner of the offending vehicle as respondents.

2. The tribunal, after inquiry, awarded compensation in the sum of Rs. 7,72,308/- with interest @ 9% per annum from the date of filing of the petition and called upon the insurer to satisfy the award. The said

compensation includes Rs. 6,37,308/-, calculated towards loss of dependency on the basis of minimum wages (Rs. 3,934/-) on the multiplier of 18, with addition of future prospects of increase to the extent of 50%.

3. The insurer is aggrieved on the element of future prospects being added and the multiplier of 18 being adopted. The appeal must succeed on both contentions.

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 SCC 166.

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 the deceased was bachelor, the monthly loss of dependency is calculated as $(3934 \div 2)$ Rs. 1967/-. As per the material on record, the age of the father and mother was 55 years and 45 years respectively on the date of accident. This would mean the average age was 50 years and the multiplier of 13 would apply. Therefore, the loss of dependency is calculated as $(1,967 \times 12 \times 13)$ Rs. 3,06,852/- , rounded off to Rs. 3,07,000/-. Adding the non-pecuniary damages in the total sum of Rs. 1,35,000/- awarded by the tribunal, the total compensation payable in the case comes to Rs. $(3,07,000 + 1,35,000)$ Rs. 4,42,000/-.

7. The award is reduced accordingly. It shall carry interest as levied by the tribunal.

8. By order dated 28.07.2014, the insurance company had been directed to deposit the entire awarded amount with accumulated interest within the period specified with the Registrar General of this Court and out of such deposit 75% was allowed to be released.

9. The Registrar General shall calculate the amounts now payable to the claimants in terms of the award modified as above and release the same in terms of the impugned judgment.

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

11. The appeal is disposed of in above terms.

12. Dasti.

R.K. GAUBA
(JUDGE)

APRIL 06, 2016/nk