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

Date of Decision: 27.05.2016

\+ MAC.APP. 534/2014 & CM No. 10274/2014

SHRIRAM GENERAL INSURANCE CO. LTD ..... Appellant

Through: Mr. Sameer Nandwani, Advocate

versus

ASHA RANI & ORS ..... Respondents

Through: None.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The insurance company which has been burdened with the liability to pay the compensation awarded in favour of the first and second respondents (claimants), by judgment dated 22.03.2014 of the motor accident claims tribunal (tribunal) in the accident claim case (Suit No. 05/2014) on account of death of Mohan Lal in a motor vehicular accident on 26.07.2013 involving negligent driving of motor vehicle No. DL 1LG 5978 (the offending vehicle), concededly insured with it against third party risk, is in appeal questioning the calculation of loss of dependency by inclusion of the element of future prospects of increase to the extent of 30%.

2. Inspite of notice and having earlier appeared through counsel, the claimants have not been appearing to assist. Arguments of appellant have been heard. Record perused.

3. The deceased was 42 years old. The tribunal's record and judgment show no proper proof of his avocation or earnings was mustered. Having regard to the educational and vocational training, the tribunal assumed his income notionally at ₹ 8814/- but added the element of 30% to the future expense.

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. In above view, the element of future prospects cannot be added. The dependency loss is recomputed on the multiplier of 14 as (8814 x 2 ÷ 3 x 12 x 14) ₹ 9,87,168/- rounded off to ₹ 9,88,000/-. Since the accident had occurred on 26.07.2013, this Court notes that the non-pecuniary damages awarded by the tribunal are inadequate. Following the view taken by this Court in *Shriram General insurance Co. Ltd. vs. Usha & Ors. MAC Appeal No. 160/2015* decided on 05.05.2016, non-pecuniary damages under the heads of loss of love & affection and loss of consortium are granted in the sum of ₹ 1,50,000/- each besides ₹ 50,000/- each towards loss of estate and funeral expenses. Putting together all the heads of damages (pecuniary and non-pecuniary), the total compensation in the case is computed as (9,88,000 + 4, 00,000) ₹ 13,88,000/-.

7. It is also noted that the tribunal awarded interest only at 7.5 % per annum which is on the lower side. Following the consistent view taken by this Court, the rate of interest is increased to 9% per annum from the date of filing of the petition till realization [see judgment dated 22.02.2016 in MAC.APP. 165/2011 *Oriental Insurance Co Ltd v. Sangeeta Devi & Ors*.].

8. The award is modified accordingly.

9. By order dated 24th July, 2014, the insurance company had been directed to deposit the entire awarded amount within the period specified

from which 70% was allowed to be released, the balance kept in fixed deposit receipt with UCO Bank, Delhi High Court.

10. The Registrar General is directed to calculate the share payable to the claimants and release the same with proportionate interest in their favour in terms of the aforementioned direction. If there is any short fall, the same shall be deposited by the insurance company with the Registrar General within 30 days of today. On the other hand, if excess has been deposited or released, the same shall be refunded.

11. The statutory amount, if paid, shall also be refunded.

12. The appeal and the pending application are disposed of in above terms.

(R.K. GAUBA)
JUDGE

MAY 27, 2016
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