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

Date of Decision: 24th February, 2016

+ **MAC.APP. 659/2013**

NATIONAL INSURANCE CO LTD Appellant

Through Ms. Seema Gulati, Adv.

versus

SIKANDAR KAMAT@SIKANDAR CHAUDHARY & ORS

..... Respondent

Through Mr. Mukesh K Verma, Adv. for R-1

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The first respondent herein (the claimant) suffered injuries in a motor vehicular accident that occurred on 20.03.2011 in the area opposite Spice Mall, Sector-21, Noida, UP. At that point of time, he was accompanied by two friends including one named Sonu, who was on his motorcycle. It is admitted case that the claimant and the other friend were with Sonu as pillion riders on the motorcycle of the latter, when it was involved in collision against car bearing No.UP-16Y-2319 (the offending vehicle) concededly owned and driven by the second respondent herein, it being admittedly insured against third party risk with the appellant (insurer) for the relevant period. The claimant, as a result of injuries suffered, which included injuries in the head region, has been rendered permanently disabled, the disability

arising out of hemiparesis with dysphasia post head injury having been assessed by a board of doctors of Lal Bahadur Shastri Hospital of Govt. of NCT of Delhi, vide disability certificate (Ex.P1) dated 19.04.2012, to be to the extent of 63% in relation to the whole body. It must be mentioned here itself that there is no dispute raised about the injuries, or the consequences, suffered in above nature.

2. The claimant filed petition under Sections 166 and 140 of Motor Vehicles Act, 1988 (MV Act) before the Motor Accident Claims Tribunal (the Tribunal) on 12.07.2011, registered as MAC Petition.No.87/2011 seeking compensation on the allegations that the accident had occurred due to negligent driving of the car by the second respondent herein, also impleading the appellant (insurer) as party respondents. The claim case was resisted by the opposite parties (the insurer and the second respondent herein) on the averments and evidence that the accident had occurred due to negligence on the part of Sonu, who was under the influence of alcohol, as also on the part of the claimant, since he was also under heavy influence of alcohol and he having ridden on the pillion with one other person on a motorcycle, a two wheeler motor vehicle generally meant to be for use by the driver with one pillion rider only.

3. The contentions about negligence/contributory negligence on the part of the claimant were rejected by the Tribunal. It assessed the loss of income and future earnings on the basis of conclusion that his notional income would be ₹7,500/-, this by adding the factor of 50% of increase in future over and above ₹5,000/- per month as the earnings as sought to be proved through PW3.

4. It is the submission of the insurance company in appeal that the

evidence respecting the income was not believable and that future prospects could not have been added. It is also the submission of the insurance company that the element of contributory negligence should have been considered and it should have been burdened with the liability to indemnify only to the extent of 50%.

5. On careful appraisal of the evidence led through inquiry, this Court finds substance only in the submissions of the insurance company that the evidence of PW3 should not have been accepted and that the element of future prospects could not have been added.

6. In the case reported as *Sarla Verma & Ors. v. 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 has not led any evidence showing that his income was subject to any periodic increase.

8. In absence of formal proof as to the income, the earnings have to be notionally assessed on the basis of minimum wages. Since the accident had occurred on 20.03.2011, the minimum wages of ₹6084/- payable to an unskilled worker are adopted for calculating the loss of earnings. Since the evidence adduced showed that the claimant was unable to work for gain for five months, the loss of earnings during the treatment is calculated at $(6,084 \times 5)$ ₹30,420/-.

9. The claimant was 23 years old on the date of accident. In these circumstances, the loss of future earnings due to disability has to be worked out on the multiplier of 18. Since the disability is to the extent of 63%, the loss of future earnings on that basis comes to $(6,084 \times 63 \div 100)$ ₹3,832/- per month. On the multiplier of 18, the loss of future earnings comes to $(3,832 \times 12 \times 18)$ ₹8,27,712/-.

10. Thus, the total loss of earnings, in the present and future, comes to $(8,27,712 + 30,420)$ ₹ 8,58,132. Since the Tribunal had calculated a compensation payable under these heads in the sum of $(10,20,600 + 50,000)$ ₹10,07,600/-, the compensation under these heads has to be reduced by $(10,70,600 - 8,58,132)$ ₹2,12,468/-. The total compensation awarded by the Tribunal being ₹13,43,149/-, the same is liable to be reduced to ₹11,30,681 rounded off to ₹11,31,000/-. Ordered accordingly.

11. This Court does not find any merit in the plea of contributory negligence. Even if it be accepted that the claimant and the motorcycle rider

Sonu had consumed alcohol, as is statedly shown by their respective medico legal reports, it cannot be ignored, as noted by the Tribunal as well, that per the evidence, the motorcycle was stationary when it was hit by the car. There is no reason why the view taken by the Tribunal rejecting the testimony of the car driver and accepting the word of the claimant on this score should be interfered with.

12. The award is thus modified. It shall, however, carry interest as levied by the Tribunal.

13. It is noted that the Tribunal did not make any arrangement to protect the corpus of the compensation awarded. This was necessary having regard to the fact that claimant has suffered permanent disability.

14. By order dated 22.07.2013, the insurance company had been directed to deposit the entire awarded amount with up-to-date interest with the Registrar General of this Court within the period specified. Out of such deposit, 50% was allowed to be released to the claimant, the balance having been kept in an FDR with UCO Bank for a period of six months to be renewed periodically.

15. In the above facts and circumstances it is directed that from out of the balance lying in the fixed deposit receipt, the Registrar General shall release the balance payable to the claimant in terms of the amount modified as above, though keeping it in fixed deposit receipt for a period of 10 years with right to draw monthly interest being granted to the claimant. The fixed deposit receipt so taken out shall be handed over to the claimant by the Registrar General and allowed to be transferred to a bank of the choice of the claimant.

16. The excess deposited by the appellant with statutory deposit, if made,

shall be refunded.

17. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

FEBRUARY 24, 2016/VLD

