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

Date of Decision: 27.04.2016

+ MAC.APP. 362/2014 & CM No.6907/2014

SHYAM YADAV Appellant

Through: Mr. L.C. Rajput, Advocate

versus

THE NATIONAL INSURANCE COMPANY

LTD & ORS Respondents

Through: Ms. Archana Gaur, Adv. for R-1

+ MAC.APP. 465/2014

NATIONAL INSURANCE COMPANY

THROUGH MANAGER Appellant

Through: Ms. Archana Gaur, Adv.

versus

PAMFA DEVI & ORS Respondents

Through: Mr. Anshuman Bal, Advocate for R-1 to
R-5 & R-8

+ MAC.APP. 1012/2014 and CM No.18254/2014

HARVINDER YADAV Appellant

Through: Mr. Rohit Kr. Yadav, Mr. Ankit Sibbal
and Mr. Sparsh Jain, Advocates

versus

THE NATIONAL INSURANCE COMPANY LTD

AND ORS

..... Respondent

Through: Ms. Archana Gaur, Adv. for R-1

Through: Mr. L.C. Rajput, Adv. for R-2

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Dhan Bahadur, 45 years old, privately employed at a fixed salary of ₹7,000/-, suffered death on account of the injuries sustained in a motor vehicle accident that occurred on 19.10.2009, involving negligent driving of car bearing registration no.HR-26AP-0514 (offending vehicle), which was admittedly insured against third party risk with National Insurance Company Ltd. (appellant in MAC appeal 465/2014). The offending vehicle was driven at the relevant point of time by Shyam Yadav (appellant in MAC 362/2014), it being registered in the name of Harvinder Yadav (appellant in MAC 1012/2014). The widow and children of Dhan Bahadur (first to fifth respondents herein) instituted an accident claim case before the Motor Accident Claims Tribunal (Tribunal) on 10.11.2009 (the impugned judgment wrongly shows the date of institution as 16.02.2012), which was registered a case no.S-71/10/2009). Seti Devi, mother of the deceased was also impleaded as proforma respondent (no.4) in the said case, the driver, owner and insurer of the offending vehicle having been impleaded as first, second and third respondents respectively.

2. The Tribunal held inquiry and, by judgment dated 02.01.2014, upheld the case that the death had occurred due to negligent driving of the car by Shyam Yadav (driver). It calculated the compensation in the sum of ₹13,81,600 and awarded it with interest at the rate of 7.5% p.a. from the date of filing of the petition till realization.

3. The insurer, in the course of contest, while admitting the insurance policy, had taken the plea that there was a breach of the terms and conditions in as much as the driver Shyam Yadav had handed over a driving license purportedly issued by the licensing authority in Gurgaon, Haryana to the police officer who was investigating the corresponding criminal case which, upon verification, had been found to be a fake document. This fact came on record in the Accident Information Report (AIR) which was submitted by the investigating police before the Tribunal. During inquiry, however, the driver and owner of the offending vehicle took the plea that the driver actually held a valid driving license for purposes of driving a car, issued by the licensing authority at Rewari, Haryana and proved this fact through Brahm Prakash (R3W3), an official from the office of the Sub-Divisional Magistrate, Rewari which issues the driving licenses in the said area. During statement of R3W3, it came out that license under the same serial number had been issued in the name of Mr. Makhan Lal son of Mr. Deep Chand. The tribunal opted to prefer the report of the investigating officer in AIR and took it to be a case of use of forged license purportedly issued by the Gurgaon authority and rejected the defence of the owner and driver observing, *inter alia*, that a person cannot conceivably be holding two different licenses, there being no reason as to why the investigating officer

would submit a report regarding forged license. On the basis of these conclusions, the plea of the insurance company about breach of the terms and conditions of the insurance policy was upheld and whilst being directed to satisfy the award, it was granted recovery rights against the driver and owner of the offending vehicle.

4. While the driver and owner of the offending vehicle have come up with their respective appeals (M.A.C. Appeal no. 362/2014 and M.A.C. Appeal no.1012/2014) feeling aggrieved with the finding regarding the driving license and grant of recovery rights, the insurer, by its appeal (M.A.C. Appeal no.465/2014) questions only the computation of loss of dependency on the ground the element of future prospects was wrongly added whereas the income of the deceased was fixed salary.

5. *Per contra*, the claimants submit through their counsel that the award under the non-pecuniary heads of loss of estate and rate of interest levied are unduly low.

6. Having heard arguments on all sides, this court finds substance in the contention of the insurer with regard to the computation of loss of dependency as also in the grievance of the claimant about non-pecuniary heads of damages besides rate of interest.

7. 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.

8. 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.

9. The income of the deceased was fixed salary of ₹7,000/- and no evidence was adduced about the progressive rise. The loss of dependency is, therefore, recalculated on the basis of income of ₹7,000/- p.m. After deduction of 1/4th towards personal and living expenses, and on the multiplier of 14, as rightly applied by the tribunal, the total loss of dependency is computed as (₹7,000 x 3 / 4 x 12 x 14) ₹8,82,000.

10. Following the view taken in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshamma* (2015) 9 SCC 150,

award for loss of estate is increased to ₹25,000/-. Thus, the total compensation payable in the case is worked out as (₹8,82,000/- +250000) ₹11,32,000.

11. Following the consistent view taken by this court, the rate of interest is increased to 9% p.a. 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.*].

12. The award is modified accordingly.

13. The contention of the owner and driver of the offending vehicle with regard to the finding regarding breach of terms and conditions of the insurance policy must be accepted. It indeed is a question of anxiety that the driver was purportedly holding two driving licenses, one issued by the licensing authority at Rewari and the other purported to have been issued by the licensing authority at Gurgaon. The fact remains that the driving license issued by the licensing authority of Rewari was proved to be valid and effective for purposes of the offending vehicle. The enforcement agencies are at liberty to proceed against the driver for being in possession of a forged driving license purportedly issued by the licensing authority at Gurgaon. But, that does not mean that the Rewari license is to be disbelieved. As to the discrepancy about another license in the name of one Makhan Lal against the same serial number, appropriate explanation was given by the official witness.

14. In above view, the finding about breach of terms and conditions of the insurance policy is set aside. The insurance policy is not entitled to any

recovery rights, the liability to indemnify squarely lying at its door. The impugned judgment is modified accordingly.

15. By order dated 19.05.2014 in M.A.C.A. 465/2014, the insurance company had been directed to deposit the entire awarded amount with upto date interest with the Registrar General within the time prescribed. Out of the same, 80% was allowed to be released to the claimants, the balance having been kept in fixed deposit receipt with UCO Bank, Delhi High Court branch. The Registrar General shall now recalculate the amount payable to the claimants in terms of the award modified as above and release the same to the claimants. If excess has been deposited, the same shall be refunded. Conversely, if there is a short fall, the insurance company shall be obliged to deposit the same with the Tribunal within 30 days for it to be released to the claimants.

16. By order dated 10.11.2014 in M.A.C.A No.1012/2014, the owner of the offending vehicle had been directed to deposit a sum of Rs.1 Lakh as a per-condition for stay against recovery rights. Since recovery rights have been set aside, the said amount shall be refunded.

17. Statutory deposits, if any, in each of these appeals shall be refunded.

18. The appeals and the pending applications are disposed of in the aforesaid terms.

R.K. GAUBA
(JUDGE)

APRIL 27, 2016/yg