$~6

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

Date of Decision: 18.05.2016

\+ MAC.APP. 752/2013 and CM No.4503/2015

KARIMAN MAHTO & ORS ..... Appellants

Through: Mr. Prem Kumar Singh, Advocate

versus

HDFC ERGO GENERAL INSURANCE CO LTD ..... Respondent

Through: Mr. P. Acharya, Advocate

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Prabhu Mahto, aged about 42 years, earning his livelihood as a driver of a three wheeler scooter (TSR) was driving his TSR bearing registration no.DL-1RL-0704 with his nephew Rajesh Mahto (PW-2) travelling with him on the way to Nizamuddin Railway Station on 29.07.2010 when in the area of Khel Gaon flyover it was involved in a collision with a tractor trailor-3516 bearing registration no.HR-38C-5494 (offending vehicle). As a result of the injuries suffered in the said collision, Prabhu Mahto died. His five children, first to fifth respondents (claimants), instituted an accident claim case (petition no.548/2010) on 28.08.2010 seeking compensation

impleading the driver, owners and insurer of the offending vehicle as respondents, they now being first to fourth respondents in appeal. It was alleged in the said petition that the accident that occurred, and resulted in death due to negligent driving of the offending vehicle.

2. Upon inquiry, by judgment dated 07.05.2013, the Motor Accident Claims Tribunal (tribunal) upheld the case of the claimants to above effect. The said finding has since attained finality as it was not challenged further. By the aforesaid judgment, the tribunal awarded compensation in the sum of Rs.8,67,448/- with interest at the rate of 7.5% in favour of the claimants calculating it thus :

Loss of dependency	₹8,12,448/-
Loss of Consortium	₹10,000/-
Loss of love and affection	₹25,000/-
Loss of Estate	₹10,000/-
Funeral expenses	₹10,000/-

3. While discussing the evidence with regard to the negligence, however, the tribunal found that the deceased person driving the TSR was also guilty of contributory negligence to the extent of 20% and thus, amount of compensation assessed was reduced correspondingly.

4. The claimants are in appeal questioning the finding of contributory negligence and also contending that the dependency loss required to be

calculated with addition of future prospects of increase and that the awards under the non-pecuniary heads of damages and rate of interest are inadequate.

5. Having heard arguments and having gone through the record, this court finds substance in the appeal against the finding of contributory negligence. PW-2 who was travelling in the TSR has narrated the sequence of events leading to the collision. The offending vehicle was initially moving behind had overtaken the TSR and having come ahead, its driver suddenly applied brake resulting in the collision. It may be that the TSR had struck the offending vehicle from behind but the cause has been duly explained by PW-2. After having overtaken the TSR, the driver of the offending vehicle ought to have moved to a safe distance before applying brakes if so required. The sudden overtaking, followed by sudden application of brakes, undoubtedly led to the accident and, thus, the guilt lies squarely on the part of the driver of the offending vehicle. Noticeably, the driver of the offending vehicle did not step into the witness box to offer any justification for the above noted manner of driving. In these circumstances, the finding of contributory negligence and direction about deduction on such account are set aside.

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 SCC 166.

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.

8. The income of the deceased was notionally assessed on minimum wages. In absence of clear evidence about the regularity or extent of earnings, much less of any progressive rise in income, future prospects could not have been added.

9. There is, however, merit in the contention about the non-pecuniary damages and rate of interest. It is noted that the wife of the deceased, had pre-deceased him and, thus, there was no reason for loss of consortium to be added.

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

compensation in the sum of ₹1 lakh on account of loss of love & affection and ₹25,000/- each towards loss of estate and funeral expense are added.

11. The award is, thus, increased to (Rs.8,12,448/- + Rs.1,50,000/-) Rs.9,62,448/-, rounded off to Rs.9,63,000/-.

12. 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*.]. The award is modified accordingly.

13. The insurer is directed to deposit the balance of the amount payable under the modified award with the tribunal within 30 days making it available to be released to the claimants.

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

(R.K. GAUBA)
JUDGE

MAY 18, 2016
yg