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

Date of Decision: 15th February, 2016

+ MAC.APP. 623/2014 & CM APPL. 11180/2014

THE ORIENTAL INSURANCE CO LTD Appellant

Through: Mr. A. K. Soni, Adv.

versus

KAMLESH KUMARI & ORS Respondents

Through: Mr. Sameer Nandwani & Mr.
Pradeep Kumar, Advs. for R-1
with R-1 in person.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The insurance company is in appeal questioning the computation of compensation granted to the claimant (first respondent herein) by the Motor Accident Claims Tribunal (the tribunal) on the claim petition under Sections 166 & 140 of Motor Vehicles Act, 1988 (the MV Act) registered as Suit no. 86/2011, on account of death of her son Mohit Kumar Gupta (the deceased), aged 24 years, in a motor vehicular accident that occurred on 22.12.2009 at about 05:47 pm, involving a bus bearing registration no. DL-1PB-3927 (the offending vehicle) which admittedly was insured with the appellant/insurance company against third party risk for the period in question.

2. The tribunal assessed the compensation at ₹20,04,000/- and awarded interest @ 7.5% *p.a.* in favour of the claimants, calculating the loss of dependency to the tune of ₹19,44,000/-. It is this computation of loss of dependency which is the bone of contention in the appeal at hand.

3. The tribunal accepted the evidence of Deepak Gandhi (PW4), the Territory Manager, HDFC Bank Ltd. to the effect that the deceased was engaged with their Bank on contractual basis for a period of one year receiving basic salary of ₹9500/- alongwith conveyance allowance of ₹2500/- per month as per fixed term contract (Ex.PW4/1).

4. The contention of the insurance company in appeal is that the amount of ₹2500/- per month received by the deceased towards conveyance could not be added to the income of the deceased and the same is thus, to be deducted.

5. Having regard to the dicta in *Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121, only deduction to be made from the salary and allowances is on account of income tax. Even otherwise, the conveyance allowance is regular revenue received which is added to the income of the deceased to compute the overall loss of dependency.

6. The next contention raised is with regard to the addition of future prospects to the extent of 50% in the income of the deceased.

7. In the case reported as *Sarla Verma* (supra), 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. Lalita 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 neither in the pleadings nor in the evidence there is any whisper of claim that the income of deceased was subject to any periodical increase. In these circumstances, the element of future prospects must be discounted from the income.

9. The insurance company is also aggrieved with the multiplier of 18, which had been adopted having regard to the age of the deceased. Since the claim was brought by the mother in a case where deceased was a bachelor, her age should have been considered for selection of appropriate multiplier. It is well settled that in such cases it is the age of the deceased or the claimants whichever is higher which is to be adopted. [*G.M. Kerela SRTC vs Susamma Thomas* (1994) 2 SCC 176; *U.P.S.R.T.C. vs Trilok Chandra* (1996) 4 SCC 362; *New India Assurance Co. Ltd. vs Charlie* AIR 2005 SC 2157; *New India Assurance*

Co. Ltd. vs Shanti Pathak (Smt.) & Ors., (2007) 10 SCC 1; *Ramesh Singh & Anr. vs Satbir Singh & Anr.* (2008) 2 SCC 667; *National Insurance Company Ltd. vs Shyam Singh & Ors.* (2011) 7 SCC 65; *Ashwinbhai Jayantilal Modi vs Ramkaran Ramchandra Sharma & Anr.* (2015) 2 SCC 180]

10. As per document (Ex.PW3/2), a copy of the voter ID card, age of the claimant/ mother was 59 years at the relevant date. Thus, loss of dependency is to be computed on the basis of multiplier of 9.

11. In these circumstances, loss of dependency, calculated at ₹6000/- per month, after deducting personal and living expenses comes to (6000x12x9) ₹6,48,000/-.

12. The learned counsel for the claimant, submitted that since compensation is being re-determined, his grievances as to the deficient award under the non-pecuniary heads of loss of love & affection should also be taken into account. He also submits that even rate of interest awarded is on the lower side.

13. In the case reported as *Rajesh & Ors. vs. Rajbir & Ors.*, (2013) 9 SCC 54, the award on account of loss of love & affection was made at ₹1,00,000/-. There is no reason as to why similar award should not be granted in the case at hand.

14. This court agrees with the submission that the rate of interest awarded @ 7.5% is on the lower side. It has been consistent view of the Hon'ble Supreme Court in a series of cases that 9% would be an appropriate rate of interest [*Kaushnuma Begum vs New India Assurance Co. Ltd.* (2001) 2 SCC 9; *Supe Dei vs National Insurance Co. Ltd.* (2009) 4 SCC 513; *Municipal Corporation of Delhi, Delhi vs Association of Victims of Uphaar Tragedy and Ors.* (2011) 14 SCC 481;

Basappa vs T. Ramesh (2014) 10 SCC 789; *Syed Sadiq etc. vs Divisional Manager, United India Ins. Company* (2014) 2 SCC 735; *Surti Gupta vs United India Insurance Company and Ors.* 2015 (3) SCALE 795; *Kumari Kiran vs Sajjan Singh* (2015) 1 SCC 539]

15. Thus, the compensation under the non-pecuniary head of loss of love & affection is increased from ₹25000/- to ₹1,00,000/-. Adding funeral expenses of ₹25,000/- and loss of estate of ₹10,000/-, compensation under heads of non-pecuniary damages comes to ₹1,35,000/-. In the result, the overall compensation awarded comes to ₹7,83,000/-. The award is modified accordingly. It is directed that it shall carry interest 9% per annum from the date of filing of the petition till realization.

16. By order dated 25.07.2014, the insurance company had been called upon to deposit the entire amount awarded with interest with the Registrar General within the period specified, out of which 70% was allowed to be released in terms of award of the tribunal. It is noted that only ten percent (10%) was released in favour of the claimant by the tribunal in cash, while the balance was put in fixed deposit receipt.

17. The learned counsel for the claimant assures that the fixed deposit receipt for the amount received in excess shall be returned to the Registrar General for it being made over to the insurance company, subject to the right of appeal against this judgment. The claimant is directed to do so within four weeks of this order. The bank is directed not to allow any encashment of the fixed deposit till the Registrar General has calculated the amount to which the claimant shall be entitled in terms of the award now modified, and communicate the same to the bank.

18. The Registrar General shall do the needful within six weeks of this judgment. The balance deposit in excess, with the statutory deposit, shall be refunded to the insurance company.

19. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

FEBRUARY 15, 2016

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