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

Date of Decision: 30.05.2016

\+ MAC.APP. 703/2011 & CM Nos. 12751/2016 & 14177/2011

NEW INDIA ASSURANCE CO. LTD. .... Appellant

Through: Mr. Sameer Nandwani, Adv.

versus

MANISHA SHARMA & ORS ..... Respondents

Through: Mr. Zakir Hussain, Adv.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Satish Pathak @ Satish Sharma, aged about 22 years, gainfully employed in private service, suffered injuries in a motor vehicular accident on the night intervening 8^{th} and 9^{th} September, 2006, involving two motor vehicles, one being motorcycle bearing registration No. UP 13 L 2296 (motorcycle) and the other being truck bearing registration No. HR 38 K 6881 (the truck), as a consequence of which he died. His dependent family members, first to fourth respondents (claimants) instituted claim case (Suit No. 105/2010) on 21.02.2007 alleging that the accident had occurred due to negligent driving of the truck, impleading its owner and driver (fifth and sixth respondents respectively) as party respondents, in addition to the appellant insurance company (insurer), it having concededly issued an insurance policy against third party risk for the period in question. Upon inquiry, by judgment dated 11.05.2011, the motor accident claims tribunal

(tribunal) upheld the case of death having been caused due to negligent driving of the truck. The tribunal thereafter assessed the compensation, and awarded it in the sum of ₹ 10,59,496/- with interest @ 7.5% per annum from the date of filing of the petition till realization, calculating it thus:-

Total loss of dependency	*₹ 9,89,496/-*
Loss of consortium	*₹ 10,000/-*
Loss of estate	*₹ 10,000/-*
Compensation towards funeral expenses	*₹ 35,000/-*
Compensation for loss of love and affection	*₹ 65,000/-*
Total	*₹ 11,09,496/-*
Less: Interim Award	*₹ 50,000/-*
Balance Payable Sum	*₹ 10,59,496/-*

2. The insurer, by the appeal at hand, submits that the evidence on record showed the deceased himself was guilty of contributory negligence as he had hit the truck from the rear side. It also submits that the tribunal having assessed the income notionally on the basis of minimum wages (₹ 4072/-) payable to a graduate fell into error by adding the element of future prospects of increase. *Per contra,* the claimants argue through their counsel that the tribunal wrongly rejected the evidence of Anil Kumar (PW-2), clearly showing that the deceased was earning ₹ 5,500/- per month from the private employment. The claimant also submit that the non-pecuniary heads of damages as awarded and the rate of interest as levied are inadequate.

3. The appeal was put in the category of regular matters by order dated 28.09.2012. It has come up on application (CM No. 12751/2016) for release of the interest amount moved by the claimants. During the hearing on the said application, it was pointed out by the counsel for the appellant that only

short issues are involved. With the consent of both sides, the matter is taken up for final hearing and disposal.

4. Having heard the learned counsel for the insurer and the claimants and having gone through the record, this Court finds no substance in the contention about contributory negligence. The claimants had examined Kailash Arya (PW-2) on 04.01.2010 on the strength of his affidavit (Ex.PW 2/1, upon which he was cross-examined on the same date. There is nothing in the cross-examination of the said witness on which basis his evidence ought to be disbelieved. Seen in the light of evidence gathered by the police in the corresponding criminal case, copy of which was submitted by the claimants on record, it emerges that the truck had first overtaken the motorcycle on which Kailash Arya (PW-2) was moving, almost parallel to the deceased on his separate motorcycle and, thereafter, having come at a rash speed and hit against the latter (the deceased) causing him to fall down and suffered fatal injuries. In these circumstances, there is no occasion for the plea of contributory negligence to be entertained or accepted. There is substance in the grievance of the claimants that the evidence of Anil Kumar (PW-2) about private employment and earnings in the sum of ₹ 5,500/- per month was wrongly rejected. The salary slip (Ex.PW2/1) proved by the appellant clearly brings home the case of the claimants that the deceased was employed with private entity on the said earnings.

5. 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.

6. 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.

7. Since there is nothing in the evidence on record that the deceased was earning a progressive rise in income, he concededly having joined a couple of months prior to his accident, the element of future prospects has to be kept out. The loss of dependency is re-calculated as (5,500 x 2 ÷ 4 x 12 x 18) Rs. 8,91,000/-. 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 Rs. 1 lakh each on account of loss of love & affection and loss of consortium and Rs. 25,000/- each towards loss of estate and funeral expense are added. Thus, the total compensation payable in the case is computed as (8,91,000+ 2,50,000), Rs.

11,41,000/- Needless to add, the amount received under Section 140 of MV Act, shall be suitably adjusted.

8. Following the consistent view taken by this Court [see judgment dated 22.02.2016 in MAC.APP. 165/2011 *Oriental Insurance Co Ltd v. Sangeeta Devi & Ors*.], the rate of interest is increased to 9% per annum from the date of filing of the petition till realization.

9. The tribunal had apportioned the compensation amongst different claimants by specifying the amounts falling to their respective shares. By order dated 2nd August, 2011, the enforcement of the award was stayed subject to the appellant depositing the entire awarded amount with upto date interest with the Registrar General. By order dated 1st June, 2012, 50% of the said amount was allowed to be released in terms of the impugned judgment. It is directed that the entire enhanced portion of the award and the amount payable as a result of increase in the rate of interest shall fall to the share of the first claimant (widow) Manisha Sharma @ Munni Devi. The Registrar General shall now release the balance of the amount held in fixed deposit to the claimants in terms of these directions. The insurance company shall be obliged to pay the balance of its liability in terms of the modification ordered above by requisite deposit with the tribunal within 30 days, making it available to be released.

10. The appeal is disposed of in above terms.

(R.K. GAUBA)
JUDGE

MAY 30, 2016/nk