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

Date of Decision: 16th May, 2016

+ **MAC.APP. 370/2013**

THE NEW INDIA ASSURANCE CO. LTD. Appellant

Through:

versus

MS. MADHU GUPTA & ORS. Respondents

Through: Mr. Arvind Kr. Sharma, Adv. for R-1.

Mr. Navneet Goyal, Mr. Manish Maini and Ms.
Rupika Singh, Advocates for R-3

AND

+ **MAC.APP. 700/2013**

MS MADHU GUPTA Appellant

Through: Mr. Arvind Kr. Sharma, Adv.

versus

SH HARISH CHANDRA & ORS Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Bhagwan Sahai Gupta, aged about 30 years, a medical practitioner holding the degrees of MBBS and MS, suffered injuries in a motor vehicular

accident that occurred on 16.07.1985 near ISBT Chowk, Delhi, due to negligent driving of a truck bearing registration no.DEG 1936 (offending vehicle) admittedly insured against third party risk with New India Assurance Co. Ltd. (appellant in MACA 370/2013), and died in consequence. His widow Madhu Gupta (appellant in MACA 700/2013) instituted an accident claim case (suit no. 454A/12) on 01.10.1985 impleading the insurer, driver and owner of the offending vehicle as parties, in addition to her father-in-law, Murari Lal and mother-in-law Kesar Bai. It appears that the parents of the deceased died during the pendency of the inquiry before the Motor Accident Claims Tribunal (tribunal) and the claim petition was prosecuted to the logical end only by the widow.

2. The tribunal held inquiry and on that basis, by judgment dated 20.10.1995, upheld the case about death having occurred due to negligent driving of the offending vehicle and awarded compensation in the sum of ₹5 Lakh. It appears that the insurer had pleaded before the tribunal that its liability under the insurance cover was limited to ₹1,50,000/- in terms of section 95(2)(a) of the Motor Vehicles Act, 1939 (M.V. Act) which would apply to the cases at hand. This contention was upheld by the tribunal in the said judgment rendered on 20.10.1995.

3. Harish Chandra (third respondent in MACA 370/2013 and the first respondent in MACA 700/2013), the owner of the offending vehicle, having felt aggrieved, challenged the said judgment dated 20.10.1995 by FAO 131/1998. His appeal was allowed by judgment dated 17.08.2012 whereby the matter was remitted to the tribunal with direction for opportunity to be given to all the parties to lead further evidence for fresh findings to be

returned by the tribunal on all the issues. It may be added here that under the award granted by the tribunal on 20.10.1995, an amount of ₹2 Lakh had been deposited by the owner which had been released to the claimants. While remitting the case for further inquiry, by judgment dated 17.08.2012, it was clarified that the said payment earlier made would be subject to the final outcome of the claim petition before the tribunal and the amount lying in deposit shall be retained in a fixed deposit for a period of one year to be renewed from time to time.

4. After the case had been thus remitted, the tribunal held further inquiry, and by fresh judgment dated 14.01.2013, reiterated the finding about negligent driving of the truck having led to the death. The compensation in the sum of ₹5,49,200/- was awarded with interest at the rate of 9% p.a. from the date of filing of the petition till realization (though in earlier paragraph 13, the tribunal had indicated the rate of interest to be 12% p.a.), directing the insurance company to pay, having rejected its plea about its liability being restricted to ₹1,50,000/- only. For calculating the compensation thus awarded, the tribunal assumed the income of the deceased from medical practice to be ₹3,000/- p.m., deducted 1/3rd towards personal expenses and having regard to the age of the deceased, applied the multiplier of 16, though after adding 30% towards future prospects of income. It also added ₹10,000/- each towards loss to estate and loss to consortium besides ₹5,000/- towards funeral expenses and ₹25,000/- towards loss of love and affection.

5. The claimant widow, by her appeal (MACA 700/2013), has sought enhancement of the compensation on the ground that the income of the

deceased should have been taken at ₹7,000/- in the minimum as had been deposed to by PW-5, another medical practitioner with whom the deceased was working. It is also submitted that the awards under the non-pecuniary heads of damages are inadequate. The insurer, by its appeal (MACA 370/2013), takes exception to the calculation of loss of dependency, its plea essentially being that the element of future prospects could not have been added in absence of any proof as to progressive increase in the income. It reiterates its plea about its liability to indemnify being limited to ₹1,50,000/-, the argument being that it was for the insured (owner of the offending vehicle) to prove that the premium for unlimited cover had been paid.

6. Having heard both sides and having gone through the tribunal's record, this court finds that the tribunal has taken an appropriate view on the question of income of the deceased. Though PW-5 deposed to the effect that the deceased was working for gain at his nursing home, during cross-examination, he admitted that no record in this respect was maintained by the said nursing home. Mere oral word of PW-5 on the subject cannot be accepted. The salary certificate proved by the claimant herself shows the emoluments to be ₹2412.35. The tribunal assumed the income on such basis taking the income at ₹3,000/- p.m. which approach cannot be faulted with.

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 SCC 166.

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.

9. In absence of any proof of progressive rise in income, there is no case made out of any future prospects to be considered. The deceased, being a married person, at the time of death, his family being inclusive of wife and parents, $\frac{1}{3}^{\text{rd}}$ towards personal and living expenses has to be deducted, and in view of the age (31 years), calculated on the date of birth of 29.08.1954, the multiplier of 16 is to be applied. Thus, the loss of dependency is recomputed as $(\text{₹}3,000 \times \frac{2}{3} \times 12 \times 16)$ ₹3,84,000/-.

10. Having regard to the date of accident, the approach taken in *Madhu Marwaha & Anr vs. Dal Chand & Anr.*, *FAO 102/2001*, decided on 01.02.2016 is followed and an award of ₹50,000/- each towards loss of consortium and loss of love and affection and ₹10,000/- each towards

funeral expenses and loss to estate are added. Thus, the total compensation in the case comes to (₹3,84,000 + ₹1,20,000) ₹5,04,000/-.

11. The award is modified accordingly. It shall carry interest at the rate of 9% p.a. from the date of filing of the petition till realization.

12. Coming to the issue of limited liability, this court agrees with the submission of the insurer that it was for the insured (owner of the offending vehicle) to prove that additional premium had been paid to seek a cover for unlimited liability over and above the restricted liability provided by the statute by the provision contained in Section 95(2)(a) of the M.V. Act, 1939. No such evidence having been produced, the owner of the offending vehicle cannot claim to be indemnified beyond the statutory limit of ₹1,50,000/-. Reference to an unproved document purported to be copy of the insurance cover was improper. The finding recorded by the tribunal in this regard is, thus, set aside. It is held that though the insurance company shall be obliged to satisfy the claim of the third party by requisite payment, it shall be entitled to recover the amount paid over and above its statutory liability restricted to ₹1,50,000/- with proportionate interest from the insured (owner of the offending vehicle) by appropriate proceedings before the tribunal.

13. By order dated 26.04.2013 in MACA 370/2013, the insurance company had been directed to deposit the entire awarded amount with upto date interest with the tribunal within the period specified and, out of such deposit, ₹1.5 Lakh with proportionate interest was allowed to be released in favour of respondent no.1, the balance kept in fixed deposit receipt for a period of one year to be renewed periodically. The Registrar General shall now calculate the balance amount payable to the claimants from such

deposit under the modified award and release it accordingly, refunding the excess deposited to the insurance company with statutory deposits, if made.

14. The amount of ₹2 Lakh paid under the earlier order shall be suitably adjusted. Since the record shows that the owner of the offending vehicle had deposited ₹2 Lakh in compliance with the conditional order of stay against execution, an amount of ₹50,000/- shall be refunded to him.

15. Both appeals are disposed of in above terms.

MAY 16, 2016
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(R.K. GAUBA)
JUDGE