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

Date of Decision: 7th April, 2016

\+ **MAC.APP. 264/2015 & CMNo. 4679/2015**

THE ORIENTAL INSURANCE CO. LTD. ..... Appellant
Through: Mr. A.K. Soni, Adv.

versus

BINDU CHAUDHARY& ORS ..... Respondents
Through: Mr. A.K. Chaudhary, Adv. for R-1 & 2.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Gulshan Kumar, aged 16 years, a bachelor, died in a motor vehicular accident that had occurred on 06.10.2010 due to accident caused by a bus bearing no. UP 14 R 7432, admittedly insured against third party risk with the appellant insurance company (insurer). His parents (first and second respondents) instituted accident claim case (Suit No. 619/2010) on 15.12.2010 which was decided on 05.01.2015 by motor accident claims tribunal (the tribunal) upholding the case of respondents and awarding compensation in the sum of Rs. 8,47,530/- with interest @ 9% per annum calculating it thus:-

Loss of financial dependency	₹ 7, 12, 530/-
Loss of Love and affection	₹ 1, 00, 000/-

Loss of Estate	₹ 10,000/-
Funeral Expenses	₹ 25,000/-
Total	₹ 8, 47,530/-

2. For calculating the loss of dependency, the tribunal assumed the income notionally at Rs. 5,278/- per month which is equivalent to the minimum wages payable to an unskilled worker at the relevant point of time. The tribunal added 50% towards future prospects, worked out the loss after deducting 1/2 of the said amount towards personal & living expenses.

3. The only ground urged in the appeal is against the addition of future prospects.

4. 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.

5. 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.

6. Since the income was notionally assessed on minimum wages, there is no case made out for future prospects to be added. Thus, the monthly loss comes to (5278÷ 2) Rs. 2639. The multiplier of 15 was correctly adopted inasmuch as the age of the father (first claimant) at the relevant point of time was 40 years and of the mother (second claimant) was 33 years. Thus, the total loss of dependency is calculated at (2639 x 12 x 15) Rs. 4,75,020/- , rounded off to Rs. 4,76,000/-. Adding the other components of compensation, the total compensation comes to (4,76,000 + 1,35,000) Rs. 6,11,000/-. Needless to add, it shall carry interest as levied by the tribunal. The award is modified as above.

7. By order dated 26.03.2015, 80% directed to be deposited was allowed to be released. The insurance company shall deposit the balance with the tribunal within 30 days whereupon it shall be released to the claimant.

8. Statutory deposit, if made, shall be refunded.

R.K. GAUBA
(JUDGE)

APRIL 07, 2016
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