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

Date of Decision: 22nd March, 2016

+ **MAC.APP. 719/2013**

ORIENTAL INSURANCE CO. LTD. Appellant

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

versus

SMT. MANISHA DEVI & ORS. Respondents

Through: Mr. S.N. Parashar, Adv. for R-1 to 4.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The short issue raised in this appeal directed against the judgment dated 16.5.2013 of the motor accident claims tribunal (the tribunal) in motor accident claim case registered as MACT No. 1207/2010 is with regard to the addition of future prospects while calculating the loss of dependency. The claimants (first and fourth respondents herein), while seeking compensation under Sections 166 and 140 of Motor Vehicles Act, 1988 (MV Act) on account of death of Ajit Kumar, had pleaded that he was engaged in a private service. The said fact or the earnings in the sum of ₹ 6,000/- per month could not be proved. The tribunal notionally assessed the income of the deceased at ₹ 3,934/- per month and calculated the loss of dependency by adding the element of future prospects.

2. 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 SCC166.

3. 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.

4. Since there is no proof of any progressive increase in the income of the deceased, the loss of dependency is recomputed, without the element of future prospects, after deducting $1/4^{\text{th}}$ towards personal & living expenses (there being four dependants). The monthly loss of dependancy is calculated as $(3934 \times 3/4) = ₹ 2,951$. On the multiplier of 17 (the deceased was 26 years old), the total loss of dependancy comes to $(2951 \times 12 \times 17)$

₹ 6,02,004/- rounded off to ₹ 6,02,000/-. The tribunal awarded non-pecuniary damages put together at ₹ 2,35,000/-. Adding the said sum, the total compensation payable in the case comes to (6,02,000 + 2,35,000) ₹ 8,37,000. Thus, the compensation is reduced to ₹ 8,37,000/-. It shall carry interest as levied by the tribunal.

5. The tribunal had apportioned the compensation by specifying the amounts that will fall in the share of each claimant. Since the compensation awarded has been reduced, the said directions would need to be modified.

6. By order dated 07.08.2013, 80% of the awarded amount deposited by the insurer from out of the entire award was allowed to be released, the balance being kept in fixed deposit receipt with UCO Bank, Delhi High Court Branch, initially for a period of six months to be renewed periodically. The Registrar General shall now calculate the amount which is to be released to the claimants in terms of the impugned judgment. The balance, if any, shall be entirely paid to the widow (first respondent).

7. The excess in deposit shall be refunded to the insurance company with statutory deposit, if made.

8. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

MARCH 22, 2016
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