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

Date of Decision: 09th May, 2016

+ **MAC.APP. 35/2014**

NATIONAL INSURANCE COMPANY LTD Appellant
Through: Ms. Neerja Sachdeva, Adv.

versus

SAROJ & ORS Respondent
Through: Mr. O P Mannie, Adv. for R-1 to 4

+ **MAC.APP. 662/2014**

SAROJ & ORS Respondent
Through: Mr. O P Mannie, Adv.

versus

NATIONAL INSURANCE COMPANY LTD Appellant
Through: Ms. Neerja Sachdeva, Adv.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Ramesh Kumar Arora suffered injuries in a motor vehicular accident that occurred on 09.07.2007 involving negligent driving of truck No.DL 1GA 3906 (the offending vehicle) admittedly insured against third party risk with National Insurance Company Ltd. (appellant in MAC.APP.No.35/2014). The injuries suffered included those in the head region and accident claim case was filed on 31.08.2007 on his behalf by his wife, *inter alia*, stating that due to the injuries he had been rendered

mentally challenged. In the claim petition (MACT No.141/09/13), the insurance company was impleaded as a party respondent in addition to the driver and owner of the offending vehicle. The petition was contested. The victim Ramesh Kumar Arora, however died on 08.03.2009 during the pendency of the proceedings before the tribunal. On the application moved by the dependent family members (appellants in MAC.APP.No.662/2014), the case was converted into one seeking compensation on account of death in the motor vehicular accident.

2. The proceedings resulted in judgment dated 17.10.2013 of the motor accident claims tribunal (tribunal) upholding the case that Ramesh Kumar Arora having been injured in the motor vehicular accident on 09.07.2007 on account of negligent driving of the offending vehicle had consequently died on 08.03.2009. The tribunal, by the impugned judgment later corrected by order dated 31.01.2014, awarded compensation in the sum of ₹8,21,512/- with interest at 9% per annum from the date of filing of the amended petition (09.11.2009) till realization. The amount of compensation was calculated, thus :

Pecuniary Damages:

1) Loss of dependency	-----	Rs. 3,95,062.80
2) Funeral charges	-----	Rs. 25,000/-
3) Loss of Estate	-----	Rs. 10,000/-
4) Loss of consortium	-----	Rs. 1,00,000/-

Non Pecuniary Damages:

5) Loss of love, company and affection etc. -----	Rs. 1,00,000/-
6) Loss of gratuitous services -----	Rs. 50,000/-
7) Medical expenses -----	Rs. 1,41,450/-
Total =	<u>Rs. 8,21,512/-</u>

3. The insurer, which has been fastened with the liability, has come up in appeal (MAC.APP.No.35/2014) contending that connection between the injuries suffered in accident and the death was not proved. It also questions the computation of compensation submitting that element of future prospects to the extent of 15% was improper. It is further aggrieved with awards under non-pecuniary heads of damages submitting that they are inflated. *Per contra*, the claimants by their appeal (MAC.APP.No.662/2014) urge that the interest should have been levied from the date of filing of the original petition rather than from the date of amended petition.

4. Having heard both sides and having gone through the tribunal's record, this Court finds the argument about the cause of death to be improper. The tribunal has discussed this aspect at length in the context of second issue and noted, *inter alia*, that the medical treatment record includes the treatment for a head injury as late as on 24.02.2009. Since the medical record clearly shows after the accident the victim had remained under prolonged treatment, there can be no doubt as to the fact that the death is attributable to the injuries suffered in the accident. The finding returned by the tribunal in this regard must be upheld.

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. The claimants were unable to muster any clear proof as to the nature of avocation of the deceased prior to the accident. In these circumstances, the income was notionally assessed on the basis of minimum wages (₹3,470/-). Thus, the loss of dependency has to be calculated without the element of future prospects. The deceased was 54 years old at the time of death. Therefore, the multiplier of 11 applies. After deducting 1/4th towards personal and living expenses, the total dependency loss is calculated as $(3,470 \times 3 \div 4 \times 12 \times 11)$ ₹3,43,530/- rounded off to ₹3,45,000/-.

8. The submissions of the insurance company against the non-pecuniary damages do not deserve to be accepted in view of the fact that having suffered the injuries on 09.07.2007, the victim had remained under treatment till death on 08.03.2009. This definitely would have required more than normal gratuitous services to be provided by the wife (first claimant).

9. The total award payable in the case comes to (3,45,000 + 25,000 + 10,000 + 1,00,000 + 1,00,000 + 50,000 + 1,41,450) ₹7,71,450/- rounded off to ₹7,72,000/-. The claimants shall be entitled to interest from the date of filing of the original petition (i.e. 31.08.2007) till realization.

10. The tribunal had apportioned the award by specifying the amounts payable to the claimants. By order dated 15.01.2014, in MAC.APP.No.35/2014, the insurer had been directed to deposit the entire awarded amount with up-to-date interest within the period specified and out the same 60% was allowed to be released to the claimants as per the impugned judgment, the balance kept in fixed deposit receipt with UCO Bank, Delhi High Court branch. In the facts and circumstances, it is directed that the amounts already released in favour of the second to fourth respondents shall be treated as their respective shares in the compensation, the entire balance to now go only to the first respondent (wife).

11. The Registrar General shall calculate the amount payable to the claimants in terms of the directions and release the same from out of the balance held in deposit, refunding the excess, if any, to the insurance company.

12. The statutory deposit, if made, shall be refunded.

13. The appeals are disposed of with above observations.

R.K. GAUBA
(JUDGE)

MAY 10, 2016
VLD