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

Date of Decision: 23rd March, 2016

+ **MAC.APP. 742/2011**

NEW INDIA ASSURANCE CO LTD

..... Appellant

Through Mr. P Acharya, Adv.

versus

BIMLA DEVI & ORS

..... Respondent

Through None

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Balwant Singh died in a motor vehicular accident on 13.02.2006 statedly due to rash/negligent driving of truck bearing No.HR 46B 1939 (the offending vehicle) which was admittedly insured against third party risk with the respondent (insurer). The claim petition under Sections 166 and 140 of Motor Vehicles Act, 1988 (MV Act) was brought on 08.03.2007, registered as suit No.526/07/08, before motor accidents claims tribunal (tribunal). The driver and owner of the offending vehicle were impleaded as parties in addition to the insurer. The tribunal computed the compensation as under :

“1	Loss of dependency (4157 X12X13)	=Rs. 6,48,492/-
2	Loss of Consortium	= Rs. 10,000/-
3	Loss of Love and affection	= Rs. 1,00,000/-
4	For funeral expenses	= Rs. 10,000/-
5	Loss of estate	= Rs. 10,000/-
Total		Rs. 7,78,492/-
(Rupees Seven Lacs Seventy Eight Thousand four Hundred and ninety two Only)		

2. The insurance company had pleaded that there was a breach of terms and conditions of the insurance policy as there was no valid permit held in respect of the offending vehicle. This plea was upheld and the insurance company (asked to pay the compensation) was granted recovery rights.

3. The insurance company, by the appeal at hand, questions the computation of loss of dependency on the ground that it was wrongly calculated by addition of future prospects to the extent of 50% over and above the notional income (₹3,695/-) assessed on minimum wages. It also insists that instead of being called upon to pay, it should have been fully exonerated in view of the breach.

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 SCC166.

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 there was no proof of regular employment or progressive increase in income, the element of future prospects has to be kept out. The loss of dependency, after deducting $1/4^{\text{th}}$ (there are four claimants) comes to $(3,695 \times 3 \div 4)$ ₹2,771/- per month. Since the age of the deceased was in the region of 46 to 48 years, the tribunal correctly adopted the multiplier of 13. Thus, the total loss of dependency is calculated as $(2,771 \times 12 \times 13)$ ₹4,32,276/- rounded off to ₹4,33,000/-.

7. Following the view taken in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshamma* (2015) 9 SCC 150, compensation in the sum of ₹1 lakh each on account of love & affection and loss of consortium and ₹25,000/- each towards loss of estate and funeral expense are added. Thus, the total compensation payable in the case is computed as $(4,33,000 + 2,50,000)$ ₹6,83,000/-.

8. It is noted that the tribunal granted 7.5% as the interest. 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. While the share of second to fourth claimants is maintained, the entire balance shall go to the first claimant (widow). The award is modified as above.

10. In view of the judgments in *National Insurance Company V. Swaran Singh* (2004) 3 SCC 297 and *United India Insurance Company Ltd. V. Lehru & Ors.* (2003 3 SCC 338, there is no good ground made out for the insurance company to be fully exonerated. It has already been granted recovery rights. No further modification in the judgment is called for.

11. In terms of the order dated 18.08.2011, the insurance company had been directed to deposit the entire awarded amount with up-to-date interest with the Registrar General of this Court, which was to be kept in fixed deposit receipt. By order dated 17.04.2013, 60% of the said amount was released to the claimants. The Registrar General shall now recalculate the amount payable to the claimants in terms of the above directions and release the same with proportionate interest in their favour. If there is any short fall, the same shall be deposited by the insurance company with the Registrar General within 30 days of today. On the other hand, if excess has been deposited or released, the same shall be refunded.

12. The statutory deposit, if made, shall be refunded.
13. The appeal stands disposed of in above terms.

MARCH 23, 2016
VLD

R.K. GAUBA
(JUDGE)

