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

Date of Decision: 30th March, 2016

\+ MAC.APP. 764/2013

SHRIRAM GENERAL INSURANCE CO LTD ..... Appellant

Through: Mr. P. Acharya & Ms. Nitika Chaturvedi, Advs.

versus

OM PRAKASH & ORS ..... Respondents

Through: Mr. S.N. Parashar, Adv. for R-1 & 2.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Amit Kumar, a student of second year of a professional course of Bachelor of Business Administration, then 17 years old, died in a motor vehicular accident that occurred on 29.11.2011 involving a motor vehicle described as bus bearing No. DL 1PB 0426 (the offending vehicle) which was admittedly insured against third party risk with the appellant insurance company (insurer). Upon the claim petition under Sections 166 and 140 of Motor Vehicles Act, 1988 brought by his parents (first and second respondents herein), registered as Suit No. 340/12, *inter alia,* on the basis of detailed accident report (DAR), the motor accident claims tribunal (tribunal), by judgment dated 06.03.2013, notionally assessed his income on the basis of minimum wages payable to a matriculate (₹ 8112) after adding

30% of future prospects of increase and on the multiplier of 15 on the basis of age of the mother (38 years), computed the loss of dependency at ₹ 9,49,104/- and further after adding ₹ 25,000/- towards loss of love & affection besides ₹ 10,000/- each towards funeral charges and loss to estate, granted compensation at ₹ 9,94, 104/- with interest @ 7.5% from the date of filing of the petition (11.5.2012) till realization.

2. The appellant insurer, by this appeal, questions the addition of future prospects. *Per contra,* the claimants raise grievance about inadequacy of non-pecuniary damages and the interest levied. The contentions of both sides must be accepted.

3. 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.

4. 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.

5. Therefore, the loss of dependency is calculated on the basis of notional income at ₹ 8,112/-. Since the deceased was a bachelor, monthly loss comes to (8112 ÷ 2) ₹ 4,056/-. On the multiplier of 15, the total loss of dependency is calculated at (4,056 x 12 x 15) ₹ 7,30,080/-. Following the view taken in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshmamma* (2015) 9 SCC 150, adding the element of non-pecuniary heads of damages ₹ 1,00,000/- towards loss of love & affection and ₹ 25,000/- each towards loss of estate and funeral expenses, the total compensation payable comes to ₹ 8,80,080/- rounded off to ₹ 8,80,100/-.-

6. 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.

7. The award is modified accordingly. The award shall be proportioned equally amongst the two claimants.

8. By order dated 21.08.2013, while the insurance company was called upon to deposit the entire awarded amount, 80% was allowed to be released, balance to be kept in fixed deposit with UCO Bank initially for a period of six months to be renewed from time to time.

9. The Registrar General shall now calculate the amounts payable to the claimants in terms of the impugned judgment and release the same, refunding the excess, if any, with statutory deposit to the insurer. Conversely, if more amount is required to be paid on account of rate of interest, the insurer shall be directed to deposit the same with the tribunal within 30 days for it to be released accordingly.

10. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

MARCH 30, 2016/nk