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

Date of Decision: 16th May, 2016

\+ **MAC.APP. 766/2013**

NATIONAL INSURANCE CO LTD ..... Appellant

Through: Ms. Shantha Devi Raman, Adv.

versus

SH BIJENDER KUMAR & ORS ..... Respondents

Through: Mr. S. N. Parashar, Adv. for respondents/claimants.

AND

\+ **MAC.APP. 771/2013**

NATIONAL INSURANCE CO LTD ..... Appellant

Through: Ms. Shantha Devi Raman, Adv.

versus

SH BIJENDER KUMAR & ORS ..... Respondents

Through: Mr. S. N. Parashar, Adv. for respondents/claimants

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. On 27.12.2010, Smt. Munesh and her son Tarun Dedha were moving on motorcycle bearing registration no.DL-8SAM-7415 (the motorcycle) driven by the latter. At about 05:15 PM the motorcycle was involved in a

collision with a bus bearing registration no.UP-12C-5421 (bus) statedly driven in a rash manner, resulting in both, the motorcycle driver and pillion rider, falling down and sustaining injuries that caused their death. Two accident claims case were instituted by the dependent family members of the deceased persons, one (suit no. 64/2011) on account of death of Tarun Dedha brought by his father and junior siblings and other (suit no.65/2011) for death of Smt. Munesh brought by her husband and two surviving children. Both cases were inquired into and resulted in judgments dated 27.05.2013 and 31.05.2013 respectively. In both the cases, the motor accident claims tribunal (the tribunal) upheld the case of the claimants about deaths having occurred due to negligent driving of the bus. In the first case, compensation in the sum of ₹9,90,036/- was awarded with interest at the rate of 9% per annum from the date of filing of the petition (27.01.2011) till realization. In the second case, compensation in the sum of ₹14,91,816/- was awarded with interest at the rate of 9% per annum from the date of filing of the petition (27.01.2011) till realization. In both the cases, the tribunal found, on the basis of admission, that the bus was insured against third party risk with the appellant/insurance company (the insurer) which, thus, was directed to pay the compensation awarded.

2. The insurance company, by its appeal (MAC appeal no.766/2013) questions the award in the case of death of Tarun Dedha on the ground that the evidence as to his age was not convincing and further that proper proof of age of the deceased has been deliberately withheld and there is reason to suspect that he was not major. It is also the contention of the insurer that the minimum wages could not have been adopted as bench-mark for assessment

of loss of dependency and further that the addition of future prospects of increase to the extent of 40% in the said case and multiplier of 18 were erroneously adopted. *Per contra*, the counsel for the claimants submits that the award of ₹10,000/- under the head of loss of estate is meager.

3. In the other case (MAC Appeal no.771/2013), on account of death of Smt. Munesh, the insurance company submits that the award is on the higher side and that there is no reason why the minimum wages of an unskilled worker should have been adopted.

4. Having heard the learned counsel on both sides and having gone through the tribunal's record, this court finds no merit in the contention about age of Tarun Dedha. In the petition, his age was disclosed as 18 and 1/2(half) years. In the oral evidence, it was indicated that he was over 18 years. Undoubtedly, the copy of the ration card on record seems to indicate that he was born in 1997 but that cannot be treated as a good proof in that the autopsy report also shows that the age of the deceased boy was found to be 18 years. In the face of medical opinion about the age and in absence of any other evidence to the contrary, the findings that the deceased was 18 years does not call for any interference. Since the deceased Tarun Dedha was major, there is no reason why the minimum wages could not have been applied in this case for calculating the loss of dependency.

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. In above view, there is no possibility of future prospects to be factored in. Further, having regard to the age of the claimant/father (37 years) the proper multiplier for calculating the loss of dependency is found to be 15 years. In these circumstances, loss of dependency is calculated as (5278/2x12x15) ₹4,75,020/-, rounded off to ₹4,76,000/-. The award under loss of estate is increased to ₹25,000/-. The total compensation in the case, thus, comes to (4,76,000+1,50,000) ₹6,26,000/-. The award in the case of death of Tarun Ghera is thus modified. Needless to add, it shall carry interest as levied by the tribunal.

8. It is noted that the tribunal has calculated the compensation in the case of death of Smt. Munesh abiding by the decision of this court in *Royal Sundaram Alliance Co. Ltd. & etc. vs. Master Manmeet Singh & Ors.*, (2012) ILR 4 Delhi 547 . Therefore, there is no reason why the award in the said case should be disturbed.

9. By identical orders 23.08.2013 in both the appeals, the insurance company had been directed to deposit the entire awarded amount with up-to-date interest with the Registrar General within the period specified and out of such deposit 60% was allowed to be released to the claimant, the balance kept in fixed deposit for a period of six months to be renewed periodically. The award in case of death of Smt. Munesh having been upheld, the balance lying in deposit shall also now be released to the claimants.

10. The award in the case of death of Tarun Dedha has been reduced. The Registrar General shall calculate the amounts payable to the claimant under modified award and release the same from the balance refunding the excess, if any, to the insurance company.

11. The statutory amount in both the cases, if deposited, shall be refunded.

12. Both the appeals are disposed of in above terms.

R.K. GAUBA
(JUDGE)

MAY 16, 2016/ssc