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

Date of Decision: 13.05.2016

+ MAC.APP. 698/2014 and CM No.12316/2014 and 11695/2015

THE ORIENTAL INSURANCE CO LTD Appellant

Through: Mr.J.P.N. Shahi, Advocate

versus

KHURSHEED & ORS Respondent

Through: Mr. Pranav Kumar Choudhary, Adv. for
R-3

+ MAC.APP. 699/2014

THE ORIENTAL INSURANCE CO LTD Appellant

Through: Mr.J.P.N. Shahi, Advocate

versus

MS NILOFER @ FARZANA & ORS Respondents

Through: Mr. Pranav Kumar Choudhary, Adv. for
R-2

Mr. Rohit Kumar, Adv. for R-3

+ MAC.APP. 703/2014

THE ORIENTAL INSURANCE CO LTD Appellant

Through: Mr.J.P.N. Shahi, Advocate

versus

SH ISLAM MALIK & ORS

..... Respondents

Through: Mr. Pranav Kumar Choudhary, Adv. for
R-2

+ MAC.APP. 708/2014

THE ORIENTAL INSURANCE CO LTD

..... Appellant

Through: Mr.J.P.N. Shahi, Advocate

versus

MASTER SAMEER & ORS

..... Respondents

Through: Mr. Pranav Kumar Choudhary, Adv. for
R-2

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. On 22.02.2010, Afzal, Nilofer, Islam Malik and Master Sameer were travelling in a motor vehicle described as rural transport vehicle bearing registration no.DL-1VA-0920 (RTV) from Laxmi Nagar to India Gate. At about 10.15 p.m., the driver of the RTV took a sharp turn towards right side at the junction of Tilak Marg and Bhagwan Dass Road in a rash speed, as a result of which the vehicle hit the pavement and overturned, resulting in such persons receiving injuries, Afzal dying in the consequence. Four

accident claim cases came to be instituted on 01.04.2010 before the Motor Accident Claims Tribunal (tribunal), they including, first,(suit no.21/11) on account of death of Afzal, by his parents (he being a bachelor), they now being first and second respondents (claimants) in MACA 698/2014; besides second, suit no.17/11, third (suit no.18/11); and the fourth (suit no.19/11), on account of injuries suffered by Nilofer, Islam Malik and Master Sameer respectively, they being first respondents in MAC 699/2014, 703/2014 and 708/2014 respectively. In the claim petitions, the appellant insurance company (insurer) was impleaded as a party respondent, it having admittedly issued insurance policy against third party risk for the period in question in respect of the RTV, in addition to the driver and owner of the said vehicle.

2. The petitions were contested. On the basis of inquiry, the tribunal by a common judgment, rendered on 07.05.2014, governing all the four claim cases, returned a finding upholding the case about the injuries having been suffered on account of the negligent driving of the RTV, with Afzal dying in the consequence. This finding has attained finality as it was not challenged further.

3. In the claim petition, on account of death of Afzal, the tribunal awarded ₹10,07,592/- with interest at the rate of 7.5% p.a. in favour of the claimants, the same including ₹25,000/- each towards funeral expenses and loss of love and affection, ₹10,000/-towards loss to estate besides ₹9,47,592/- towards loss of dependency. In the cases of claims on account of injuries, the tribunal awarded, by the same judgment, amounts of

₹25,149/-, ₹62,298/- and ₹14,098/- respectively in favour of the Nilofer, Islam Malik and Master Sameer respectively.

4. The insurance company led evidence in respect of its plea that there was a breach of the terms and conditions of the policy by examining two witnesses including Rakesh Tiwari (R4W1) and V.D. Talwar (R4W2), the former an official from the office of licencing authority, Mayur Vihar and the latter, an Administrative Officer of the insurer. The thrust of the evidence of the said witnesses essentially is that though the driver of the offending RTV possessed a driving licence for light motor vehicle, goods vehicles or non transport vehicle, the same would not hold good for the offending vehicle which was used as a transport vehicle. The tribunal, however, was not impressed and thus declined recovery rights referring, *inter alia*, to the law laid down in *National Insurance Company V. Swaran Singh (2004) 3 SCC 297*.

5. By the appeal (MACA 698/2014) in the case of claim on account of death of Afzal, the insurance company questions the computation of loss of dependency on the ground that the income of the deceased was assumed at the rate of minimum wages of a non matriculate (₹5850) but the tribunal fell into error by adding the element of future prospects of increase to the extent of 50% without any basis.

6. 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.

7. 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.

8. In absence of any clear or cogent proof as to the income or progressive rise therein, the element of future prospects has to be kept out. Since the deceased was a bachelor, 50% is to be taken out towards personal and living expenses and having regard to his age, the multiplier of 18 is to be applied. Thus, the dependency loss is recalculated as (₹5850/2 x 12 x 18) ₹6,31,800/- rounded off to ₹6,32,000/-.

9. It is, however, noted that the non-pecuniary damages awarded by the tribunal and the rate of interest levied are inadequate. Following the view taken in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshamma* (2015) 9 SCC 150, the award of ₹1 Lakh towards loss of love and affection and ₹25,000/- each towards funeral

expenses and loss to estate are added. Thus, the compensation in the case of death of Afzal comes to (₹6,32,000/- + 1,50,000/-) ₹7,82,000/-.

10. The award in above said case is modified accordingly.

11. Following the consistent view taken by this Court, the rate of interest is increased in each case to 9% per annum from the date of filing of the petition till realization. [see judgment dated 22.02.2016 in MAC.APP. 165/2011 *Oriental Insurance Co Ltd v. Sangeeta Devi & Ors.*].

12. The contention about breach of terms and conditions of the insurance policy has been duly considered by the tribunal and rejected for sound reasons. The driver of RTV had held a valid and effective driving licence. The only fact that it did not bear an endorsement about transport vehicle would not make a difference. It cannot be said to be a fundamental breach of the terms and conditions of the insurance policy much less to have contributed to the cause for accident. Thus, the plea for recovery rights must be rejected. [see *National Insurance Company V. Swaran Singh (2004) 3 SCC 297*].

13. By order dated 04.08.2014 in MACA 698/2014, the insurance company had been directed to deposit the entire awarded amount with accumulated interest with the Registrar General of this court, within the period specified, and out of the same 70% was allowed to be released to the claimants, the balance kept in fixed deposit receipts in UCO Bank, Delhi High Court Branch, New Delhi to be renewed periodically. The Registrar General shall now calculate the amount payable to the claimants in the said case and release the same from out of the deposit thus held by refunding the

excess, if any, to the insurer. In case, the amount deposited is found to be deficient, the insurer shall be obliged to deposit the balance of its liability with the tribunal within 30 days making it available to be released to the claimants.

14. Statutory deposits in all the four cases, if made, shall be refunded.

15. The appeals and the pending applications are disposed of in above terms.

MAY 13, 2016
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R.K. GAUBA
(JUDGE)

