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

Date of Decision: 30.05.2016

+ **MAC.APP. 398/2015 & CM Nos.8062/2015 & 8064/2015**

ROYAL SUNDARAM ALLIANCE INSURANCE CO LTD

..... Appellant

Through Ms. Suman Bagga and Mr. Pankaj
Gupta, Advs.

versus

RAJIV JAIN & ORS

..... Respondent

Through Mr. R K Bachchan, Adv. for R-1

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The first respondent (claimant) suffered injuries in a motor vehicular accident that occurred on 11.06.2009 involving negligent driving of an Indica car bearing registration No.UP 14AT 6165 (the offending vehicle). He filed an accident claim case (MAC petition No.12/12) on 17.01.2012 seeking compensation impleading the appellant insurance company (insurer) as one of the party respondents, it being admittedly the insurer of the offending vehicle, in addition to its driver and owner on the averments that accident had occurred due to negligence on the part of the said driver. The tribunal held inquiry and, by judgment dated 15.10.2014, upheld his case about injuries having been inflicted due to negligent driving of the offending

vehicle. It found that the claimant, then aged 31 years, had suffered functional disability to the extent of 36%, it being permanent on account of fracture in the left femur bone, fracture of both bones of the left leg and fracture of left acetabulum, as assessed by a board of doctors (Ex.PW1/3) to be 71% in relation to the left lower limb. Compensation in the sum of ₹9,43,214/- was awarded with interest at 9% per annum, which was calculated thus :

1 Compensation towards pain and sufferings	Rs. 1,50,000/-
2 Loss of amenities and enjoyment	Rs. 1,50,000/-
3 Compensation towards disfigurement and loss of expectancy of life	Rs. 1,00,000/-
4 Compensation towards loss of future earning due to disability	Rs. 4,09,536/-
5 Loss of earning of petitioner for 18 months @ Rs. 3950/- per month.	Rs. 71,100/-
6 Expenses towards medical bills	Rs. 10,978/-
7 Compensation towards conveyance and special diet (without bills)	Rs. 20,000/-
8 Attendant charges for 8 months @ Rs. 3950/- per month	Rs. 31,600/-

2. The appeal is pressed by the insurer, with the burden of liability to pay, only to question the calculation of future earnings due to disability on the ground that the claimant had not mustered any clear evidence about his earnings and, thus, the income was calculated on the basis of minimum wages of an unskilled worker (3,950/-) to which the element of future prospects was added, improperly so.

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 SCC 166.

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. Lalita 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. Since the income was assessed with no clear proof of earnings or progressive rise therein, the future loss of earnings has to be calculated afresh without such factor. It is re-computed as $(3,950 \times 36 \div 100 \times 12 \times 16)$ ₹2,73,024/-. Since the tribunal had computed the said amount as ₹4,09,536/-, the total award has to be reduced by $(4,09,536 - 2,73,024)$ ₹1,36,512/-. The award is, thus, reduced to $(9,43,214 - 1,36,512)$ ₹8,06,702/- rounded off to ₹8,07,000/-. Needless to add, it shall carry interest as levied by the tribunal.

6. By order dated 07.05.2015, the insurance company had been directed to deposit 75% of the amount awarded by the tribunal with proportionate interest which was allowed to be released to the claimant, after being put in fixed deposit receipt for a period of one year. The insurance company shall now deposit the balance of its liability in terms of modification with the tribunal within 30 days of this judgment whereupon it shall be released to the claimant.

7. Statutory deposit, if made, shall be refunded.

8. The appeal is disposed of in above terms.

MAY 30, 2016
VLD

(R.K. GAUBA)
JUDGE

