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

Date of Decision: 26th February, 2016

+ **MAC.APP. 864/2012 & CM No.10918/2013**

HDFC ERGO GEN INSURANCE CO LTD

..... Appellant

Through Ms. Neerja Sachdeva, Adv. with Ms.
Pooja Tandon, Adv.

versus

SMT DROPTI & ORS

..... Respondent

Through Ms. Rupika Singh, Adv. for Mr.
Navneet Goyal, Adv. for R-1 to 4

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. By judgment dated 30.05.2012 the Motor Accident Claims Tribunal (The Tribunal) awarded compensation in the sum of Rs.16,97,300/- with interest at 9% per annum from 20.01.2012 till realization thereby deciding the claim petition under sections 166 and 140 of Motor Vehicles Act, 1988 (MV Act) presented by first to fourth Respondents herein (collectively, the claimants) on account of death of Narender Kumar, aged 36 years, in a motor vehicular accident that had occurred at about 10.35 p.m. on 04.10.2011 involving Santro Car bearing number DL 4CS 6731 (the offending vehicle) which was concededly insured against third party risk

with the appellant insurance company. The driver and the owner of the said offending vehicle, who were also made party respondents, were held jointly and severely liable and the appellant company was called upon to indemnify in terms of the insurance policy.

2. By the appeal at hand the Insurance Company questions the computation of compensation mainly on the ground that the element of future prospects was wrongly added and further that the counsel fee of Rs.50,000/- was uncalled for. Though in the appeal the Insurance company had also raised the issue of minimum wages and the awards under non pecuniary heads, at the hearing the said contentions are not pressed, particularly in the face of finding that the tribunal had adopted the minimum wages of semi-skilled worker and the non pecuniary heads of damages in sum total is justified, though under specific heads there seem to be some errors.

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. As the deceased was self employed, given the present state of law the future prospects could not have been added. It is noted that the tribunal erroneously adopted the minimum wages of semi-skilled persons which was prevalent prior to 01.10.2011. Therefore, the loss of dependency is to be re-worked on minimum wages of Rs.7,358/- which was prevalent on the date of death. The Tribunal deducted 1/^{4th} on account of personal and living expenses and, rightly so, having regard to the number of dependants. The monthly loss of dependency, thus, works out to $(7,358 \times 3 \div 4)$ Rs.5,519/-. On the multiplier of 15, correctly adopted, the total loss of dependency comes to $(5,519 \times 12 \times 15)$ Rs.9,93,420/- rounded off to Rs.9,94,000/-. Adding the non pecuniary damages as awarded by the Tribunal, the total compensation comes to Rs.12,54,000/- (Rupees Twelve Lakhs and Fifty Four Thousand Only).

6. The compensation awardable in the case to the claimants is reduced as above. It shall carry interest at the rate specified in the impugned judgment. The award is modified accordingly.

7. The directions regarding the counsel fee of Rs.50,000/- being not justified are set aside.

8. The Tribunal had specified the amounts to be released to the different claimants. Since the award has been reduced, the said directions need to be suitably modified. It is directed that the first respondent (the widow) shall be entitled to 70% of the awarded compensation out of which share 80% shall be put in FDR in her name for a period of 5 years with right to draw monthly interest, the balance compensation being distributed equally amongst the remaining claimants. The amount payable to second and third respondents shall, however, be put in their respective names in nationalized banks in fixed deposit receipts for the period till they attain majority though with right given to their mother (first respondent) to draw monthly interest for their maintenance.

9. The Insurance Company had been directed by order dated 08.08.2012 to deposit 75% of the awarded amount with up to date interest (excluding counsel fee and out of pocket expenses) with UCO bank, Delhi High Court branch and upon such deposit 50% was allowed to be released to the claimants, the rest retained in fixed deposit in the Bank. The Registrar General shall now work out the amounts payable to the respective claimants in terms of the award modified as above and release the same as per above noted directions, refunding the excess, if any, to the Insurance Company. Should there be a shortfall, the Insurance Company would be duty bound to deposit the balance with the Tribunal within 30 days of this order whereupon the same shall also be accordingly dealt with.

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

11. The appeal is disposed off in above terms.

R.K. GAUBA
(JUDGE)

FEBRUARY 26, 2016
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