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

Date of Decision: 11.05.2016

\+ MAC.APP. 33/2014

ICICI LOMBARD GENERAL INSURANCE CO. LTD .... Appellant

Through: Ms.Suman Bagga and Mr. Pankaj Gupta, Advocates

versus

MANOJ KUMAR & ORS ..... Respondents

Through: None

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The first respondent had suffered injuries in a motor vehicular accident that occurred on 03.04.2009 at about 11.45 a.m. near Air Force Station, Rajokari, New Delhi involving negligent driving of a motor vehicle described as a dumper bearing registration no.HR-38N-4563 (offending vehicle) admittedly insured against third party risk for the period in question with the appellant insurance company (insurer). He instituted an accident claim case (petition no.211/2010) impleading the insurer, driver and owner of the offending vehicle as respondents. The tribunal clubbed the said case with another claim case arising out of the said accident and, by a common

judgment passed on 10.07.2013, upheld the case of the injuries having been caused due to negligent driving of the offending vehicle. The said finding has attained finality as it was not challenged further.

2. The tribunal awarded compensation in the sum of ₹10,79,000/- in favour of the claimant with interest at the rate of 9% p.a. directing the insurer to pay though granting recovery rights against the driver and owner of the offending vehicle on the basis of finding recorded as to the breach of the terms and conditions of the insurance policy.

3. By the appeal at hand, the insurer questioned the compensation awarded on account of loss of income for the period of treatment and in future. It is argued that the assumption of the tribunal that the claimant was earning ₹10,000/- p.m. is unfounded and there was no occasion for 30% future prospects being added over and above the same. It is noted that future income loss is sought to be compensated on the basis of a finding that the claimant had suffered functional disability assessed to the extent of 25% which conclusion is not under challenge.

4. In spite of the notice, the claimant has not been appearing over the last several dates of hearing. There is no good ground to defer the hearing yet again.

5. Before the tribunal, the claimant submitted that he was earning his livelihood as an AC mechanic. He, however, conceded that he had not taken any qualification in the nature of diploma or certificate for such job. Given the fact that he would work only to assist a relative also engaged in a contractual job work of AC repairing, the case of the claimant at best may be

treated as that of a semi-skilled worker. In absence of any formal proof as to the income being in the range of ₹10,000/- p.m., the minimum wages of ₹4,100/- p.m. for semi-skilled worker at the relevant point of time is assumed as his income. In these circumstances, the loss of income for six months (as calculated by the tribunal to be the period of immobility) is calculated as (₹4,100/- x 6) ₹24,600/-.

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. Since the income has been notionally assessed, there is no scope for any future prospects being added. The loss of future income on account of functional disability to the extent of 25% on the multiplier of 18 (claimant was 21 years old at the relevant point of time) is calculated as (₹4,100 x 25/100 x 12 x 18) ₹2,21,400 /-.

9. Adding ₹2,07,000/- towards medical expenses, ₹75,000/- towards pain and suffering and enjoyment of life and ₹35,000/- towards special diet, conveyance and attendant charges, as granted by the tribunal, the total compensation in the case comes to (₹2,21,400/- + 24,600/-+2,07,000/- + ₹75,000/- + ₹35,000/-) ₹5,63,000/-. Needless to say, it shall carry interest as levied by the tribunal. The award is modified accordingly.

10. By order dated 15.01.2014, the insurance company had been directed to deposit the entire awarded amount with upto date interest with the Registrar General of this court, within the time specified, from which 60% was allowed to be released, the balance kept in fixed deposit receipt with the UCO Bank, Delhi High Court branch, New Delhi, initially for a period of six months to be renewed periodically. The Registrar General shall calculate the amount payable to the claimant and release the balance, if any, to him from out of the deposit thus held refunding the excess to the insurance company. Conversely, if any excess amount has been released to the claimant, the same shall be liable to be refunded.

11. The statutory amount, if deposited, shall be refunded.

12. The appeal is disposed of in above terms.

R.K. GAUBA

(JUDGE)

MAY 11, 2016
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