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

Date of Decision: 26th April, 2016

+ **MAC.APP. 513/2008**

DAISY KURIAKOSE

..... Appellant

Through: Mr. K. N. Bhargava & Ms. Surekha
Bhargava, Advs.

versus

SANJAY KUMAR & ORS.

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The appellant (the claimant) was statedly working as a stenographer in a private employment on 15.02.1991 when she met with an accident involving scooter bearing registration no.DL-5S-1483 (the offending vehicle). She filed an accident claim case (suit, old no. 680/1991, new no.481/2001) impleading, amongst others, Oriental Insurance Company Ltd. (the insurer), which had issued a third party risk insurance policy in respect of the offending vehicle for the period in question, as fourth respondent. The motor accident claims tribunal (the tribunal) held inquiry and, by judgment dated 02.07.2008, upheld her case that the accident had occurred due to negligence on the part of the driver of the offending vehicle. It

awarded compensation in the sum of ₹2,36,000/- in her favour with interest at the rate of nine percent (9%) per annum from the date of filing of the petition, holding the driver and owner of the offending vehicle jointly and severally liable but since the insurance cover was admitted, it having failed to prove any valid defence, fourth respondent (the insurer) was directed to satisfy the award.

2. The claimant filed the present appeal seeking enhancement of compensation. The appeal has been pressed by counsel on her behalf on the ground that loss of future income on account of disability suffered has not been properly assessed. The claimant also submits that the compensation deserves to be awarded on account of loss of amenities of life and for expenditure towards attendant charges.

3. It is noted from the evidence on record that the claimant had proved disability certificate (Ex.PW5/1), copy of which has been submitted with the appeal (page 22 of the paper book), issued by medical board of Medical College hospital, Calicut, Kerala on 22.06.2006, *inter-alia*, stating that she had suffered from memory disturbance, lack of insight, perseverance and motivation. The medical board certified her permanent disability to the extent of 50%. As noted by the tribunal in the impugned judgment, the accident had resulted in head injuries which required the claimant to undergo two surgical procedures during hospitalization from 15.02.1991 to 06.03.1991, one of the said procedures having been explained as right frontal lobotomy. The evidence (Ex.PW1/13A) further shows that she had continued to suffer from seizures and had continued to be under treatment ever since. In these circumstances, the tribunal accepted the evidence about

permanent disability to the extent of 50% and calculated the loss of future income accordingly.

4. The claimant had sought to prove through Kirti Mani (PW4), an employee of Shukla Decorators, a private business house operating from Alaknanda, New Delhi that she was engaged as a steno-cum-receptionist with salary of ₹1200/- per month, besides HRA ₹300 and transport allowance ₹200/- per month. The tribunal accepted the said evidence and assessed her income at ₹1500/- per month. Since the claimant was 28 years old on the relevant date, it proceeded to compute the loss of future income, though by adopting multiplier of 18 and, thus, added ₹1,62,000/- towards loss of future income.

5. The submission of the claimant in appeal is that the element of future prospects of increase should have been taken into account in calculating the loss of future income. In this context, reliance is placed on a fresh certificate dated 31.08.2015 obtained from Shukla Decorators which has been submitted with the appeal (page 45 of the paper book) to indicate that if the claimant had continued in the said private employment, her income would have increased to ₹6500/- per month.

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. The certificate dated 31.08.2015 which has now been submitted with appeal cannot be accepted as good evidence in the face of admission of PW4 at the time of his examination on 02.03.2006 before the tribunal conceding that the said private business house has not maintained any record of employment or salary of the claimant in their office. A plea was taken at that stage that the records have since been destroyed. It was not elaborated as to why the record had to be destroyed and as to why no other corresponding record, including such as statement of account showing remittances could be produced. If the claimant had indeed been in the said private employment, she could have come up with some further proof in the nature of her employment, such as provident fund or insurance benefits accruing to her.

9. Be that as it may, in absence of any clear or cogent proof indicating any progressive rise in the income from the private employment, no good case has been made out for any further improvement in the award on account of loss of income.

10. The record clearly shows that no evidence was led to prove that any attendant had to be engaged or expenditure incurred on such account during treatment of the claimant as indoor patient. In these circumstances, there is no case made out for any attendant charges to be added.

11. The accident had occurred in February, 1991. Having regard to the facts and circumstances of the case and nature of injuries suffered, there is justification for addition of ₹25,000/- under the head of loss of amenities of life. Thus, the award is modified by adding an amount of ₹25,000/-. Needless to add, it shall carry interest as levied by the tribunal.

12. The insurance company shall be duty bound to deposit the enhanced portion of the amount with corresponding interest with the tribunal within 30 days of today, whereupon it shall be released to the claimant in accordance with law.

13. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

APRIL 26, 2016
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