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

Date of Decision: 5th April, 2016

+ **MAC.APP. 979/2012 & CM No.15498/2012**

TATA AIG GENERAL INSURANCE CO LTD.

..... Appellant

Through: Mr. Sameer Nandwani, Adv.

versus

MEENA PAL AND ORS

..... Respondent

Through: Mr. O P Mainnie, Adv.

+ **MAC.APP. 1206/2012**

MEENA PAL AND ORS

..... Appellant

Through: Mr. O P Mainnie, Adv.

versus

MOHD. NAUSHAD AND ORS.

..... Respondent

Through: Mr. Sameer Nandwani, Adv. for insurance

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Narender Pal, aged 40 years, described as a self-employed person, died as a result of injuries suffered in a motor vehicular accident that occurred on 15.05.2010 when the motorcycle on which he was riding came

to be involved in a collision with vehicle described as *phat-phat sewa* bearing registration No. DL-1Q-0248 (the offending vehicle), statedly driven in a rash manner by the sixth respondent, it being registered in the name of the seventh respondent and admittedly insured against third party risk with the appellant insurance company (the insurer) for the period in question. His legal heirs (first and fifth respondents) brought an accident claim case (petition No.343/10) seeking compensation on account of his death in the said accident, impleading the driver, owner and insurer of the offending vehicle as parties. Though the driver and owner responded by filing written statement seeking to contest the claim about the involvement of the offending vehicle or negligence on the part of the driver, at the inquiry they would not put in any effective contest nor would appear in the evidence. The contest essentially was raised by the insurer.

2. By judgment dated 19.07.2012, the tribunal decided the claim case and awarded Rs.11,23,840/- as compensation with interest at 7.5% per annum from the date of filing of the petition after holding that the claimants had proved their case under Section 166 of MV Act.

3. By its appeal (MAC.APP.No.979/2012), the insurer questions the finding recorded about the involvement of the offending vehicle submitting that the eye witness Vinod Pal (PW2) was a planted witness, whose word about the sequence of events could not have been accepted. The insurance company also questions the calculation of loss of dependency on the ground that future prospects to the extent of 50% have been wrongly added over and above the notional income (Rs.5,278/-) assessed on the basis of minimum wages.

4. *Per contra*, by their appeal (MAC.APP.No.1206/2012) the claimants seek enhancement in the compensation submitting that their claim about the income of the deceased (Rs.15,000/- per month) from the shop of *paan* and cigarette, as started by the first claimant (Meena Pal) on the strength of affidavit (Ex.PW1/X), should have been accepted. It is also the grievance of the claimants that the award of non-pecuniary damages in the sum of Rs.10,000/- each for loss of consortium, loss of estate and funeral expenses and Rs.25,000/- towards loss of love & affection and interest are inadequate.

5. Having heard both sides and having gone through the tribunal's record this Court does not find any substance in the plea with regard to the proof of involvement of negligence on the part of the owner and its driver. The evidence of PW2 cannot be disbelieved only because his presence was not noted in the first information report (FIR) by the police, which had registered a case immediately after the collision. The witness has given sufficient explanation for his absence at that stage to the effect that he had gone to inform the next of the kin of the victim. Noticeably, the driver of the offending vehicle did not step into the witness box. In these circumstances, there is no reason why the evidence of PW2 should be held as suspect.

6. This court has carefully gone through the evidence on record but finds that there is no escape from assuming the income of the deceased on the basis of minimum wages prevalent at the relevant point of time, as done by the tribunal. The claim of Rs.15,000/- per month as the income is not

supported by requisite documentary evidence. Mere reference to one stray receipt of school fee or of the electricity bill cannot be sufficient.

7. 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.

8. 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.

9. The deceased being admittedly a self-employed person, the loss of dependency has to be worked out without adding the element of future prospects. Since the deceased was 40 years old and is survived by five dependent members of his family, the deduction of 1/4th towards personal

& living expenses has to be made and the multiplier of 15 has to be applied. In this view, the monthly loss of dependency comes to $(5278 \times 3 \div 4)$ Rs.3,959/- and the total loss of dependency loss of dependency comes to $(3959 \times 12 \times 15)$ Rs.7,12,620/-, rounded of to Rs.7,13,000/-.

10. Following the view taken in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshamma* (2015) 9 SCC 150, compensation in the sum of Rs.1 lakh each on account of loss of love & affection and loss of consortium and Rs.25,000/- each towards loss of estate and funeral expense are added. Thus, the total compensation payable in the case is computed as $(7,13,000 + 2,50,000)$ Rs. 9,63,000/-.

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

12. The award is modified accordingly.

13. By order dated 05.09.2012, the insurance company have been directed to deposit 50% of the awarded amount with proportionate interest with the Registrar General which was directed to be held in fixed deposit for a period of six months to be renewed from time to time. By subsequent order dated 24.01.2014, the said deposited amount was allowed to be released to the claimants in terms of the award of the tribunal.

14. The insurance company is now directed to deposit the balance towards liability under the award modified as above with the tribunal

within 30 days whereupon the same shall also be released in accord with the apportionment granted by the tribunal.

15. Statutory amount, if deposited by the insurance company, shall be refunded.

16. Both appeals are disposed of in above terms.

APRIL 05, 2016
VLD

R.K. GAUBA
(JUDGE)

