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

Date of Decision: 02nd March, 2016

+ **MAC.APP. 402/2012**

FUTURE GENERAL INDIA INSURANCE CO. LTD..... Appellant

Through: Ms. Suman Bagga, Adv.

Versus

SMT. SATYAWATI & ORS Respondents

Through: Mr. O.P. Maini, Adv. for R-1.

+ **MAC.APP. 757/2014**

SMT. SATYAWATI Appellant

Through: Mr. O.P. Maini, Adv.

versus

FUTURE GENERAL INDIA INSURANCE CO. LTD... Respondents

Through: Ms. Suman Bagga, Adv.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Bhupendra Kumar son of first respondent in MAC appeal No. 402/2012 died as a result of injuries suffered in a motor vehicular accident

that occurred at about 6.30 a.m. on 2.7.2009 in the area of Ganda Nala Road, near Police Line, Vikas Puri, Delhi, involving vehicle described as Mahendra Champion bearing registration No. DL 1L 4068 (the offending vehicle) statedly driven in a rash/negligent manner by its driver, it being concededly insured against third party risk with the appellant insurance company (insurer). On the claim petition brought by first respondent (mother) under Sections 166 and 140 of Motor Vehicles Act 1988 (MV Act) registered as case no. 708/2009, the tribunal awarded compensation in the sum of ₹ 7,34,894/- with interest @ 7.5 % per annum from the date of filing of the petition (31.7.2009) in favour of the first respondent (claimant) directing the insurer to pay. The said award included ₹ 1,55,000/- granted under the non-pecuniary heads of damages, the balance having been calculated as loss of dependency. It is the said part of computation which is questioned by the appellant by the appeal at hand.

2. The impugned judgment of the tribunal passed on 5.3.2011 indicates that the claimant mother had shown by cogent evidence, i.e. income tax return (ITR) for assessment year 2005-2006 that the deceased, was earning ₹ 1,10,456/- from the business he was engaged in. The tribunal added 50% future prospects to arrive at the income of ₹ 1,65,684/- to calculate the loss of dependency.

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. Since the claimant’s own case that the deceased was self-employed in view of the above, the element of future prospects has to be discounted. But, at the same time, as pointed out in cross appeal (MAC Appeal No. 757/2014) by the counsel for the claimant, there is an error committed by the tribunal in assuming the age of the claimant mother to be 64 years so as to adopt the multiplier of 7. The copy of the matriculation certificate of the claimant (mark A) which is on record of the tribunal (page 105) shows that she was born on 1.1.1952. The tribunal ignored the said document and rather went by copy of the election identity card indicating her age to be 50 years as on 1.1.1995. Given the fact that matriculation certificate is available, the age as per the said document has to be accepted. In this view,

the mother was 57 years when the death of her son, on whom she was dependent, occurred. Therefore, appropriate multiplier as per the dictum of *Sarla Verma* (supra) would be 9.

6. Since the deceased was a bachelor, the loss of dependency would be $(1,10,456/2)$ ₹ 55,228/- per annum on the multiplier of 9. The loss of dependency comes to $(₹ 55,228 \times 9)$ ₹ 4,97,052/-. Adding the non-pecuniary heads of damages in the sum of ₹ 1,55,000/- as awarded by the tribunal, the total compensation payable comes to ₹ 6,52,052/- rounded off to ₹ 6,53,000/-.

7. It is noted that the tribunal awarded inadequate rate of interest. Having regard to the consistent view taken by this Court (see MAC Appeal No. 165/2011 *Oriental Insurance Co. Ltd. vs. Sangeeta Devi & Ors.* decided on 22.02.2016). The rate of interest is enhanced to 9 % per annum from the date of filing of the petition. Needless to add, the amount received by the claimant under Section 140 MV Act will have to be adjusted.

8. By order dated 18.4.2012, the insurance company had been directed to deposit the entire awarded amount with upto date interest with the Registrar General. The amount was ordered to be kept in fixed deposit receipt with UCO Bank, Delhi High Court Branch. Sixty per cent of the said amount was released by order dated 26th February, 2013. The Registrar General shall now calculate the amount payable to the claimant in terms of the award modified as above and release the same to her, refunding the balance to the insurance company with the statutory deposit, if made.

9. The appeal is disposed of in above terms.

**R.K. GAUBA
(JUDGE)**

MARCH 02, 2016
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