$~6

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

Date of Decision: 17th May, 2016

\+ **MAC.APP. 793/2014 with CM no. 14380/2014**

THE ORIENTAL INSURANCE COMPANY LIMITED

..... Appellant

Through: Mr. R. C. Mahajan, Adv.

versus

SMT. RADHA DEVI & ORS ..... Respondents

Through: Mr. Jatin Sapra, Adv. for R-1.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Sanjay, 29 years old, a bachelor working as cleaner-cum-conductor on a heavy motor vehicle, died in a motor vehicular accident that occurred on 23.12.2009, involving negligent driving of a motor vehicle described as one bearing registration no.HR-55B-9702 (the offending vehicle), admittedly insured against third party risk with the appellant/insurance company (the insurer) for the period in question. His widowed mother (first respondent/claimant) instituted an accident claim case (suit no.334/2014), on 04.08.2010, seeking compensation under Sections 166 & 140 of the Motor Vehicles At, 1988 (the MV Act), impleading the insurer, driver and owner of the offending vehicle as parties. The tribunal upheld the case of the

claimant that death had occurred due to negligent driving of the offending vehicle which finding has attained finality as it was not challenged any further. By judgment dated 22.05.2014, it awarded compensation in the sum of ₹7,10,500/- with interest at 7.5% per annum in favour of the claimant directing the insurer to pay. The compensation has been computed as under:-

Loss of dependency	:₹6,40,500/-
Love and affection	:₹ 50,000/-
Loss of Estate	:₹ 10,000/-
Funeral expenses	:₹ 10,000/-
Total	:₹7,10,500/-

2. The insurer, by appeal at hand, raises two points; one, that the dependency loss has been calculated with an element of 50% future prospects which was erroneous as the income was notionally assessed on minimum wages; second the multiplier of 18 was wrongly adopted according to the age of the deceased rather than the age of the claimant being mother.

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 SCC 166.

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. Given the fact that the claimant/mother was unable to bring any clear evidence as to the earnings of the deceased, the element of future income has to be kept out. It is, however, noted that that the tribunal had adopted minimum wages of an unskilled worker. Since the deceased was working as a cleaner-cum-conductor, the minimum wages of semi-skilled worker would have been the proper bench-mark and, thus, the income of the deceased is assumed to be ₹4119/- per month.

6. It is well settled that the multiplier has to be chosen as per the age of the deceased or that of the claimants whichever is higher [*G.M. Kerela SRTC vs Susamma Thomas* (1994) 2 SCC 176; *U.P.S.R.T.C. vs Trilok Chandra* (1996) 4 SCC 362]. The tribunal's record includes the copy of election identity card (page 459 of the tribunal's record) of the claimant/mother indicating that she was 40 years old as on 01.01.2002. In

this view, her age on the relevant date was in the bracket of 45-50 years. Thus, the multiplier of 13 will have to be applied.

7. In view of the above, dependency loss is computed as (4119/2x12x13) ₹3,21,282/-, rounded off to ₹3,22,000/-. It is noted that the tribunal has granted non-pecuniary damages and interest at a rate which is inadequate. Following the view taken in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshmamma* (2015) 9 SCC 150, the award of ₹1,00,000/- towards loss of love & affection and ₹25,000/- each towards loss to estate & funeral expenses are added. Thus, the compensation in the case comes to (3,22,000+1,50,000) ₹4,72,000/-.

8. 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.

9. The award is modified accordingly.

10. By order dated 02.09.2014, the insurance company had been directed to deposit the entire awarded amount with accumulated interest with the Registrar General and out of such deposit 70% was allowed to be released, the balance kept in fixed deposit receipt with UCO Bank, Delhi High Court branch for a period of one year to be renewed periodically. The Registrar General shall now calculate the amount payable to the claimant in terms of the award modified as above and release the balance to her refunding the excess in deposit with statutory deposit, if made, to the insurance company.

11. The appeal (with application) is disposed of in above terms.

(R.K. GAUBA)
JUDGE

MAY 17, 2016
ssc