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

Date of Decision: 24th May, 2016

+ **MAC.APP. 762/2014**

THE NEW INDIA ASSURANCE CO LTD

..... Appellant
Through Mr. J P N Shahi, Adv.

versus

NEELAM DEVI & ORS

..... Respondent
Through Mr. Mukesh K Jha, Adv. for R-1

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Ashok Kumar, a bachelor, was riding on motorcycle bearing registration No.DL 3SBF 9113 (motorcycle) on 08.12.2009 when it came to be involved in accident with a truck open body (dumper) bearing registration No.HR 38M 5736 (truck) at about 2.30 PM near Kalindi Kunj, Okhla Barrage near Panchchi Vihar gate. As a result of the injuries suffered in the process, he died. His widowed mother (first respondent) instituted accident claim case (suit No.167/2014) on 15.05.2014 seeking compensation under Sections 166 & 140 of Motor Vehicles Act, 1999 (MV Act) impleading the appellant insurance company (insurer) as one of the respondents in addition to driver-cum-owner of the truck. The tribunal held inquiry and, by

judgment dated 27.05.2014, returned a finding that death had occurred due to negligent driving of the truck. The tribunal granted compensation in the sum of ₹7,38,300/- with interest at 7.5% per annum in favour of the claimant and directed the insurance company to pay.

2. The insurer is in appeal only to challenge the calculation of loss of dependency at ₹6,68,300/- on the ground that it was erroneously computed with the element of future prospects of increase to the extent of 50% and on the multiplier of 17. It is pointed out that the tribunal was constrained to assess the income notionally at ₹4,368/- per month on the basis of minimum wages, in absence of cogent proof about the employment or earnings. It is pointed out that the age of the claimant (mother), as per the voter identity card (Ex.PW1/2), at the time of death was about 49 years and, therefore, the multiplier of 13 should have been applied.

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. Since no evidence was led to cogently prove the earnings of the deceased and as no proof has been adduced about the progressive rise in income the element of future prospects will have to be kept out. It is settled law that the dependency loss has to be calculated on the basis of multiplier to be chosen as per the age of the deceased or the claimant, whoever 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; *New India Assurance Co. Ltd. vs Charlie* AIR 2005 SC 2157; *New India Assurance Co. Ltd. vs Shanti Pathak (Smt.) & Ors.*, (2007) 10 SCC 1; *Ramesh Singh & Anr. vs Satbir Singh & Anr.* (2008) 2 SCC 667; *National Insurance Company Ltd. vs Shyam Singh & Ors.* (2011) 7 SCC 65; *Ashwinbhai Jayantilal Modi vs Ramkaran Ramchandra Sharma & Anr.* (2015) 2 SCC 180]

6. It is noted that the deceased was a matriculate (Ex.PW1/6). In these circumstances, the tribunal fell into error by adopting the minimum wages of ₹4,368/- only. The minimum wages for a matriculate during that period were ₹4,401/-. Thus, the loss of dependency is recalculated as $(4,401 \div 2 \times 12 \times 13)$ ₹3,43,278/-, rounded off to ₹3,45,000/-.

7. It is noted that the tribunal has awarded inadequate damages under the heads of loss of love & affection, loss to estate and funeral expenses. 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 ₹1 lakh on account of loss of love & affection and ₹25,000/- each towards loss of estate and funeral expense are added. Thus, the total compensation in the case is computed as (3,45,000 + 1,50,000) ₹4,95,000/-.

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 25.08.2014, the insurance company had been directed to deposit the entire awarded amount with accumulated interest within the period specified from which 70% was allowed to be released, balance kept in fixed deposit receipt.

11. The Registrar General shall now calculate the sums payable to the claimants and release the same with proportionate interest in their favour in terms of the aforementioned direction, refunding the excess, if any, with statutory deposit to the insurer. Conversely, if more amount is required to be paid, the insurer shall be obliged to deposit the same with the tribunal within 30 days of this judgment whereupon it shall be released with interest accordingly.

12. The appeal is disposed of in above terms.

(R.K. GAUBA)
JUDGE

MAY 24, 2016
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