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

Date of Decision: 03rd May, 2016

\+ **MAC.APP. 874/2013**

THE NEW INDIA ASSURANCE CO. LTD.

..... Appellant

Through Mr. Shoumik Mazumdar, Adv.

versus

PINKI PANDEY & ORS

..... Respondent

Through Ms. Amandeep Kaur and Ms. Aishwarya Saluja, Advs.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Jai Prakash, 31 year old, self employed person, died in motor vehicular accident that occurred on 03.10.2009 involving negligent driving of motor vehicle bearing registration No.DL 1M 1217 (offending vehicle) admittedly insured against third party risk with the appellant insurance company (insurer). Six members of his family, dependent upon him, now first to sixth respondents (claimants) instituted an accident claim case (MACP No.65/10) on 23.02.2010. The motor accident claims tribunal (tribunal), by judgment dated 31.07.2013, upheld the case of negligent driving of the offending vehicle and awarded compensation of ₹12,53,008/- with interest at 7.5% per annum from the date of filing of the petition

directing the insurer to pay. The said amount includes ₹10,18,008/- towards loss of dependency besides ₹1 lakh towards loss of love & affection, ₹25,000/- towards funeral expenses and ₹10,000/- towards loss of estate. The loss of dependency was calculated on the minimum wages of ₹4,713/- on which element of future prospects of increase of 50% was added. The tribunal applied the multiplier of 16, in view of the age of the deceased, and made deduction to the extent of 1/4th towards personal & living expenses.

2. By the appeal at hand, the insurer questions the computation of loss of dependency only on the ground that future prospects were wrongly added. *Per contra*, the claimants submit that award on loss of estate and rate of interest levied are inadequate.

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 the income was notionally assessed, the loss of dependency has to be worked out without the element of future prospects. Therefore, the same is computed as (4,713 x 3 ÷ 4 x 12 x 16) ₹6,78,672/- rounded off to ₹6,80,000/-. Following the view taken in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshmamma* (2015) 9 SCC 150, amount towards loss of estate is increased to ₹25,000/-.

6. Thus, the total compensation payable in the case comes to (6,80,000 + 2,50,000) ₹9,30,000/-.

7. 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.

8. The award is modified as above.

9. By order dated 27.09.2013, the insurance company had been directed to deposit the awarded amount with interest with the Registrar General within the period specified, out of which 80% was allowed to be released to the claimants. Having regard to the fact that the amount of award has been reduced, the share of second to fourth respondents is restricted to what has

already been received by each of them. The Registrar General shall recalculate the amount remaining to be paid and release the same to the first claimant (widow) alone, refunding the balance to the insurance company with statutory deposit, if any.

10. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

MAY 03, 2016
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