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

Date of Decision: 22nd February, 2016

+ MAC.APP. 982/2011 with CM APPL. Nos. 20263/2011 & 20264/2011.

ORIENTAL INSURANCE CO LTD Appellant

Through: Mr. J.P.N. Sahi, Adv.

versus

BALWINDER KAUR & ORS Respondents

Through: None.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Manjeet Singh, aged 47 years, working as Head Granthi in Gurudwara at Keshavpuram, New Delhi died as a result of the injuries suffered in a Motor Vehicular accident that occurred at about 8.30 pm on 14.10.2005 near Mukarba Chowk involving Truck bearing No.UP-30A-5782 (offending vehicle), concededly insured against third party risk with the appellant Insurance Company for the period in question. Members of his family, dependants, the first to sixth respondents herein (collectively, the claimants) filed a claim petition under Sections 166 and 140 of Motor Vehicle Act, 1988 (MV Act) before the Motor Accident Claims Tribunal (Tribunal) on 20.10.2005, when it was registered as claim petition No.230/2006. The seventh and eight respondents herein were impleaded as party respondents in the said claim case on the averments that they are driver and owner

respectively of the offending vehicle. The appellant Insurance Company was shown in the array as the third respondent before the tribunal.

2. After inquiry the tribunal passed judgment dated 10.12.2008 holding the driver and owner to be liable to pay compensation and the Insurance Company liable to indemnify. The tribunal, however, directed the insurance company to pay Rs. 900/- per month to each of the claimants from the date of filing of the claim petition and to increase the compensation by 25% every five years. The said directions were challenged by the Insurance Company by MAC APPL. No. 364/2009 which was allowed by this Court by judgment dated 13.05.2010. In the wake of the directions given by this Court in the said judgment, the Tribunal passed a fresh order on 17.07.2010 awarding lumpsum compensation in the sum of Rs.8,90,068/- with interest at 7.5% for the period of delay. It was observed that Rs.53,000/- had already been paid as interim compensation and therefore, the said amount was directed by Tribunal to be adjusted.

3. In the impugned judgment, the Tribunal calculated the loss of dependency at Rs.8,40,060/-, on the basis of multiplier of thirteen (13) and assuming the income of the deceased at Rs.5,385/- (rounded off), taking the finding to such effect as earlier recorded in the judgment dated 10.12.2008 to have attained finality. It is noted that, in the earlier judgment, the Tribunal had adopted Rs.3,589/90 as income of the deceased on the basis of minimum wages payable to a worker as on 01.08.2005, upon which 50% was added on account of increase in future prospects and the income was taken as Rs.5,384/85. The Tribunal in the judgment dated 17.07.2010 also observed that no deduction in respect of personal living expenses of the deceased is to be made.

4. The grievances of the Insurance Company in appeal are two-fold; first, that the future prospects have been wrongly added and, second, that personal and living expenses should have been deducted.
5. In spite of notice, the claimants have failed to appear to contest the appeal at hand.
6. On consideration, it is found that the submissions of the appellant on both the above aspects must be accepted. At the same time, it is noted that the awards by the Tribunal under the non-pecuniary heads of loss of love & affection, loss of consortium, loss of estate and funeral expenses are on the lower side. This Court is duty bound to bring in suitable correction in that regard so as to ensure that the compensation made payable is just and adequate.
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. This applies to the matter at hand because the claimants here have not led any evidence showing that the salary was subject to any periodic increase.

9. Thus, the loss of dependency needs to be calculated on the basis of notional income of Rs.3,589/-, rounded off to Rs.3,600/- per month, without adding any future prospects of increase. Since the number of persons dependant on the deceased are five, deduction on account of personal and living expense has to be made to the extent of one fourth. Therefore, the loss of monthly dependency comes to $(3600 \times 3/4)$ Rs.2,700/-. On the multiplier of 13, the total loss of dependency is calculated as $(2700 \times 12 \times 13)$ Rs.4,21,200/-.

10. In *Rajesh vs Rajbir Singh* (2013) 9 SCC 54, the Supreme Court awarded Rs.1,00,000/- each as non-pecuniary damages under the heads of loss of consortium and loss of love & affection, besides Rs.25,000/- towards the funeral expenses. In *Shashikala vs Gangalaksh Mamma* (2015) 9 SCC 150, the Supreme Court took the same approach and added Rs.25,000/- towards loss of estate. There is no reason why similar awards under the non-pecuniary effects should not be made in the case at hand. Therefore, the total compensation under the non-pecuniary heads of damages comes to Rs.2,50,000/-.

11. In the result, the total compensation payable to the claimants in the case at hand, is worked out as $(4,21,200/- + 2,50,000/-)$ Rs.6,71,200/-,

rounded off to Rs.6,72,000/- (six lacs seventy two thousand). By the impugned judgment the Tribunal did not give any clear directions with regard to the entitlement to interest, it is directed that the claimants shall be entitled to interest at the rate of 9% per annum from the date of filing of the petition (20.10.2005) till realization. Needless to add, while calculating the interest, the amounts already received would be adjusted.

12. The Insurance Company had deposited the entire awarded amount in the Court in terms of order passed in CRP No.38/2011 which was withdrawn for the present appeal to be filed in its place. As noted in the order dated 29.11.2011, 70% of the said deposited amount has already been released to the claimants, the balance amount lying pending.

13. Since the compensation awarded by the Tribunal has been reduced, the apportionment order of the Tribunal specifying the amounts falling to the share of different claimants, would have to be re-determined. It is directed that the first claimant (first respondent) shall be entitled to 80% of the awarded compensation and the balance shall be distributed in equal shares among the other claimants.

14. Eighty percent (80%) of the share falling in favour of the (first respondent) shall be put in fixed deposit receipt in her name in a National Bank for a period of five years with liberty to draw interest.

15. The Registrar General is directed to calculate the amounts payable to each of the claimants in terms of the award modified as above and release the same forthwith. The amounts earlier released shall be suitably adjusted. The amount deposited in excess of its liability, if any, shall be refunded to the appellant.

16. The Statutory amount deposited, if made shall be refunded.

17. The appeal is disposed of in above terms.

R.K.GAUBA, J

FEBRUARY 22, 2016/afa

