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

Date of Decision: 6th April, 2016

\+ **<u>MAC.APP. 986/2011 & CM No.20328/2011</u>**

SHRIRAM GENERAL INSURANCE CO. LTD. ..... Appellant

Through: Mr. Pankaj Seth, Adv.

versus

TRILOK DUA AND ORS. ..... Respondent

Through: None

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

<u>JUDGMENT</u>

<u>R.K.GAUBA, J (ORAL):</u>

1. Arvind Dua, a bachelor, aged 27 years old, stated to be engaged in a properly dealer business, suffered untimely death, on account of injuries sustained in a motor vehicular accident that occurred on 06.09.2010 due to rash driving of Indica car bearing registration No. UP 16R 9853 (the offending vehicle), admittedly insured against third party risk with the appellant insurance company (the insurer) for the period in question. His parents (first and second respondents herein) brought an accident claim petition (suit No.12/11) on 10.11.2011 before the motor accident claims tribunal (tribunal) under Sections 166 and 140 of Motor Vehicles Act, 1988 (MV Act) impleading the insurer, besides the driver and owner of the offending vehicle, as respondents. The tribunal, after inquiry, passed the

judgment dated 06.09.2011 whereby compensation in the sum of Rs.10,48,752/- was awarded with interest, the said amount inclusive of Rs.6,38,352/- towards loss of dependency calculated, in absence of better proof of earnings, on the basis of minimum wages (Rs.6,448/-) with element of future prospects of increase to the extent of 50%.

2. The insurer while contesting had pleaded breach of terms and conditions of the policy to claim exoneration. It was found that the driving license held by the driver on the relevant date was valid only for light motor vehicle (non-transport), the vehicle in question statedly being used as a commercial vehicle. The tribunal, however, did not exonerate the insurer on the reasoning that no evidence had been adduced on its behalf and, thus, the onus had not been discharged.

3. The insurer, by appeal at hand, presses two questions. The first relates to addition of future prospects of increase and the second concerns the plea for recovery rights on the ground there was breach of terms and conditions of the insurance policy. Whilst the first contention must be upheld, the appeal of the insurer on the second plea must fail.

4. 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.

5. 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.

6. Since the deceased was admittedly self-employed, in absence of any proof of progressive rise in his income, the element of future prospects is kept out. Since the loss of dependency in the present case would be to the extent of 50%, inasmuch as the deceased was unmarried, the total loss of dependency comes to (6,448 ÷ 2 x 12 x 11) Rs.4,25,568/-. Since the tribunal had calculated this portion of compensation at Rs.6,38,352/-, the total compensation awarded requires to be reduced by (6,38,352 – 4,25,568) Rs.2,12,784/-.

7. At the same time, it is noted that the tribunal awarded only Rs.10,000/- towards loss of estate and Rs.5,000/- towards funeral expenses. Following the view taken in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshmamma* (2015) 9 SCC 150, compensation in the sum of Rs.1 lakh on account of loss of love & affection and Rs.35,000/- towards loss of estate and funeral expense are

added. This would mean the total computation has to be made by addition of Rs.1,35,000/-. Therefore, the award requires to be reduced by (2,12,784 - 1,35,000) Rs.77,784/-.

8. In the result, the award is reduced to (10,48,752 – 77,784) Rs.9,70,968/-, rounded off to Rs.9,71,000/-. It is further noted that the tribunal had awarded only 7.5% as the rate of interest. 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 fact that the driver of the offending vehicle was holding a licence valid for light motor vehicle (non-transport) shows that it is not a case of fundamental breach of terms and conditions of the insurance policy (*National Insurance Company V. Swaran Singh* (2004) 3 SCC 297). Therefore, there is no case made out for exoneration of the insurer or it to be granted recovery rights.

10. By order dated 01.12.2011, the insurance company had been directed to deposit the entire awarded amount with up-to-date interest with the State Bank of India, Tis Hazari Court within the period specified out of which 75% was allowed to be released to the claimants. The tribunal shall now calculate the amount payable to the claimants in terms of the award modified as above and release the same from out of the balance lying in deposit. If any excess is found to be lying in deposit, the same shall be refunded. Conversely, if there is any shortfall the insurer shall be obliged to

deposit the same with the tribunal within 30 days of this judgment whereupon the same shall also be released.

11. Statutory deposit, if made, shall be refunded.

12. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

APRIL 06, 2016
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