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

Date of Decision: 17.05.2016

\+ MAC.APP. 1009/2013

RELIANCE GENERAL INSURANCE CO. LTD. ..... Appellant

Through: Mr. A.K. Soni, Advocate

versus

MAN MOHAN & ORS. ..... Respondents

Through: Mr. Dilawar Singh, Adv. for R-1 & 2

Mr. Ravi Kant Jain, Adv. for R-4

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Neeraj Agarwal, 19 years old, student of final year of degree course of Bachelor of Commerce and a professional course for qualifying as Chartered Accountant, died in a motor vehicular accident that occurred on 07.07.2012 involving a scooter bearing registration no.DL-3S-BR 0176 (scooter), on the pillion of which he was riding, and a Mahindra Scorpio bearing registration no.DL-4C-NB-0168 (offending vehicle), statedly driven in a negligent manner, it concededly being insured against third party risk with the appellant insurance company (insurer). His parents (first and second

respondents) filed an accident claim case (suit no.118/2012) on 05.11.2012 seeking compensation under Sections 166 and 140 of the Motor Vehicles Act, 1988 (M.V. Act). In the said case, besides the insurer, Parvesh Kumar and Arti Sehrawat (third and fourth respondents respectively in the appeal) were impleaded as respondents on the averments that they are the driver and owner of the offending vehicle.

2. The tribunal held inquiry and by judgment dated 26.08.2013, returned a finding that death had occurred due to accident that had been caused on account of negligent driving of the offending vehicle. This finding has since attained finality. By the said judgment, the tribunal awarded compensation in the sum of Rs.16,10,000/- with interest at the rate of 9% p.a. from the date of filing of the petition till realization calculating it thus :-

Loss of dependency	₹14,85,000/-
On account of Love and affection	₹1,00,000/-
Funeral expenses	₹25,000/-
Total	₹16,10,000/-

3. The insurer led evidence by examining Ankit Jalan (as R3W1) to prove, *inter alia* the fact that the driving license held by Parvesh Kumar (driver), upon verification had been found to be a forged document. In resisting the plea of the insurer about breach of terms and conditions of the policy, Arti Sehrawat (four respondent) examined herself (as RW2) and affirmed on oath that the driving licence of the Parvesh Kumar had been checked and his driving skills were tested before he was engaged as a driver

of the offending vehicle. This contention was upheld by the tribunal and the plea of the insurer for exoneration was rejected it being called upon to pay the compensation.

4. By the appeal at hand, the insurer questions the computation of dependency loss on the ground that the income of Rs.15,000/- has been assessed without any basis. The insurer further questions the addition of 50% towards future prospects. It also questions the rejection of its plea for exoneration stating that in the face of the report about the driving licence being fake, the tribunal should have concluded that there has been a fundamental breach of the insurance policy making the insurer entitled to avoid its liability.

5. The tribunal in assessing the income of the deceased has gone by his academic record. It assessed the income on the basis of the following considerations :-

> "..13. The petitioners claimed that at the time of accident their deceased son was 19 years old. He was a brilliant and meritortious student since his childhood and he scored 77% marks in the All India Secondary School Examination, 2008 and 81% in the All India Senior School Examination, 2010 from Central Board of Secondary Education and also scored good marks in B.Com (Hons.) Ist and 2nd year from Acharya Narender Dev College, Delhi University and also took admission in the Chartered Accountants Professional Course from The Institute of Chartered Accountants of India, ICAI Bhawan, Plot no.52, 53 and 54, Vishwas Nagar, Shahdara, Delhi-110 032 with registration no. CPT/NROO335405. Besides this, he was also imparting home tuitions and was earning ₹10,000/- per month and placed reliance upon 10th class mark sheet, 12th class mark sheet, identity card of Acharya Narendra Dev College, admission

ticket alongwith result of B.Com (Hons.) Part I & II and registration slip of the Institute of Chartered Accountants of India bearing aforesaid number alongwith acknowledgement.

14. Record reveals that at the time of fatal accident, the deceased was approximately 19 years old and by that time he had completed B.Com (Hons.) Part II from Delhi University. It is also placed on record that simultaneously, the deceased have qualified himself from registration for Common Proficiency Test with Institute of Chartered Accountants of India (herein after called ICAI) of Delhi. The scrutiny of registration slip reveals that such registration remained valid for the course for 3 years and the candidate continuous to appear for the test conducted by Institute which results into professional degree of CA. The deceased was simultaneously able to complete 2 years of his graduation and could have completed 3rd year of B.Com (Hons.) next year. In order to ascertain the earning capacity of such persons, who is a threshold of building of his career, the capacity has to be ascertain after taking into account the future prospects of such candidate in this field. Hon'ble High Court of Delhi in the case of Ramesh Chand Joshi and Anr. Vs. New India Assurance Co. Ltd. and Anr. pronounced on 20.01.2010 ascertained the earning capacity of an Engineering Student pursuing Bio Technology course by referring to average package earned by such students at the time of placement. The Hon'ble Court assess the monthly earning capacity of an Engineering Student pursuing Bio Technology course by referring to average package earned by such students at the time of placement. The Hon'ble Court assess the monthly earning capacity on such circumstances as ₹38,333/- per month and deducted 30% towards income tax. Finally, taking ₹2,68,33.1 as monthly income, compensation was awarded. In the present case, deceased even though ws pursuing B. Com (Hons). With Acharya Narender Dev College, Delhi University but another consideration of the fact that he was also pursuing course with ICAI a prestigious institute, likely to be earned professional stream in near future. In the emerging economic scenario, a professional with accountancy background are likely to get employment immediately. In the case Ramesh Chand (supra), Hon'ble High Court has referred to

> the prospect of deceased by considering the likely placement such students can achieve. In the present case, the person having accountancy knowledge has many opportunities such as working as accountant, tax return preparatory assisting the auditing, joining corporate sector etc. It is relevant to mention here that at the time of accident in year 2012 minimum wages for ordinary graduate is ₹9,282/- per month but the deceased cannot be categorized as simply graduate in view of the fact that he was pursuing Commerce (Hons.) from College affiliating with Delhi University where securing admission is difficult. He also exhibited his caliber by qualifying the registration of CPT of ICAI, monthly emoluments, which is likely to earn is assessed @ of ₹15,000/- per month. For the purpose of calculating compensation, 50% of enhancement as a future prospects is taken in this case keeping in view progression in economic market, therefore, and after adding 50%, it would come to be ₹22,500/- p.m…"

6. 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 SCC166.

7. 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 claimant here pleaded about gainful employment at a fixed salary and has not led any evidence showing the salary was subject to any periodic increase.

8. While the reasoning set out by the tribunal for assessing the income of the deceased cannot be faulted, the element of future prospects in absence of proof of any progressive rise in income will have to be kept out. The tribunal noted that the age of the parents at the relevant point of time was 56 years and 50 years respectively and taking the average age, the multiplier of 11 was adopted. Thus, the dependency loss is recalculated as (Rs.15,000 / 2 x 12 x 11) Rs.9,90,000/-.

9. It is noted that the tribunal did not make any award under the head of loss to estate. An amount of Rs.25,000/- is added under the said head. Thus, the total compensation in the case comes to (Rs.9,90,000 + Rs.1,50,000/-) Rs.11,40,000/-. It shall carry interest at the rate of 9% p.a. from the date of filing of the petition till realization.

10. The award is modified accordingly.

11. Coming to the contention about breach of the terms and conditions of the insurance policy, the tribunal is found to have rightly accepted the evidence of the owner to hold that the insurer is liable to indemnify. The

view taken is in accord with the law laid down in *United India Insurance Company Ltd. V. Lehru & Ors.* [*(2003) 3 SCC 338*].

12. Thus, the insurance company's plea for exoneration for grant of recovery rights must be rejected.

13. By order dated 08.11.2013, the insurer had been directed to deposit the entire awarded amount with upto date interest with the Registrar General of this court, within the period specified and out of the same, 50% was allowed to be released to the claimants, the balance kept in fixed deposit receipt with UCO Bank, Delhi High Court Branch, New Delhi, for a period of six months to be renewed periodically. 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 directed to deposit the same with interest with the tribunal within 30 days of this judgment whereupon it shall be released accordingly.

14. The appeal is disposed of in above terms.

(R.K. GAUBA)
JUDGE

May 17, 2016
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