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

**Date of Decision: 5<sup>th</sup> April, 2016**

+ **MAC.APP. 1010/2013**

**ORIENTAL INSURANCE CO. LTD.** ..... Appellant

Through: Mr. A.K. Soni, Adv.

versus

**SMT. KISHAN DEVI& ORS** ..... Respondents

Through: None.

**CORAM:**

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

**JUDGMENT**

**R.K.GAUBA, J (ORAL):**

1. Ompal @ Om Dass, aged 38 years, died as a result of injuries suffered in a motor vehicular accident that had occurred on 25.07.2010 involving negligent driving of motor vehicle described as truck bearing registration No. HR 38N 1055 (the offending vehicle) by the fifth respondent, it being registered in the name of fourth respondent and admittedly insured with the appellant insurance company (insurer) against third party risk for the period in question.

2. On the claim petition brought by his dependent family members (first to third respondents), registered as Suit No. 374/2010, the motor accident claims tribunal (tribunal), by judgment dated 05.08.2013, awarded compensation in the sum of ₹ 10,05,480/- with interest @ 9% per annum from the date of filing of the petition till realization, the said amount

inclusive of ₹ 1,00,000/- towards loss of love & affection, ₹ 10,000/- towards loss of estate and ₹ 25,000/- towards funeral expenses besides ₹ 8,70,480/- towards loss of dependency.

3. The insurer, which has been fastened with the liability to pay, questions the calculation of loss of dependency through the appeal at hand. It points out that the tribunal assumed the income of the deceased at ₹ 6,448/- per month, it being the minimum wages payable to a skilled worker at the relevant point of time, choosing the multiplier going by the age of the deceased, adding the element of future prospects of increase to the extent of 50%. It is argued that since the deceased was a bachelor, the multiplier should have been adopted on the basis of age of the mother (58 years) and of the father (60 years) at the relevant point of time. *Per contra*, the claimants are aggrieved stating that the award of ₹ 10,000/- towards loss of estate is inadequate. [*Shashikala V. Gangalakshamma* (2015) 9 SCC 150]

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 there is no proof of periodic rise in the income, the loss of dependency must be worked out on the basis of minimum wages of ₹ 6,448/- without adding the element of future prospects. It is well-settled that the multiplier has to be adopted to calculate the loss of dependency having regard to the age of the deceased or the claimant whichever is high. Since the deceased was a bachelor, 50% has to be deducted towards personal and living expenses. Therefore, the monthly loss of dependency is worked out at  $(6448 \div 2)$  ₹ 3,224. The total loss of dependency in the case comes to  $(3,224 \times 12 \times 9)$  ₹ 3,48,192 rounded off to ₹ 3,50,000/-. Raising the award towards loss to estate by ₹ 25,000 and adding ₹ 1,00,000/- towards loss of love & affection and ₹ 25,000/- towards funeral expenses as already awarded by the tribunal, the total compensation in the case is computed as  $(3,50,000 + 1,50,000)$  ₹ 5,00,000/-. The compensation is reduced accordingly. Needless to add, it shall carry interest as levied by the tribunal.

7. By order dated 08.11.2013, 80% of the awarded amount was released from out of the entire awarded compensation with upto date interest deposited by the insurer. By order dated 03.01.2014, it was brought to the

notice of the Court that the awarded amount had already been realized by the tribunal through attachment. Thus, the balance 20% would still be lying with the tribunal. It shall be refunded forthwith to the insurer (appellant). The insurer is at liberty to take out appropriate proceedings to recover excess which appears to have been released to the claimants.

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

9. The appeal is disposed of in above terms.

**APRIL 05, 2016**

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**R.K. GAUBA  
(JUDGE)**