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

Date of Decision: 18.05.2016

+ MAC.APP. 1022/2013 and CM No.17774/2013 and 15222/2014

BAJAJ ALLIANZ GENERAL INSURANCE

COMPANY LTD

..... Appellant

Through: Ms. Neerja Sachdeva, Advocate

versus

TAFIJUL ALI AND ORS

..... Respondents

Through: Mr.Saurabh Kansal and Ms. Pallavi S.
Kansal, Advocates for R-4

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. On 03.04.2010, Amjad was on duty as a helper on a motor vehicle described as crane bearing registration no.HR-74-0926, and suffered injuries as a result of negligent driving thereof by the fourth respondent. The deceased was aged 21 and half years old and still a bachelor. His parents and sister, dependents, first to third respondents (claimants), instituted an accident claim case (petition no.156F/10) on 20.04.2010 seeking compensation under Sections 166 and 140 of the Motor Vehicles Act, 1988

(M.V. Act). In the said proceedings, besides the driver (fourth respondent), the registered owner of the motor vehicle (fifth respondent) and the insurer (appellant) insurance company were impleaded as parties.

2. The tribunal held inquiry and, by judgment dated 05.06.2013, upheld the case of death having occurred due to negligent driving of the said vehicle. This finding has attained finality as it was not challenged further. By the impugned judgment, the tribunal awarded compensation in the sum of ₹7,62,530/- with interest at the rate of 7.5% p.a. calculating it thus :

Loss of dependency	₹7,12,530/-
Loss of Love and affection at ₹10,000/- to each petitioners	₹30,000/-
Loss of Estate	₹10,000/-
Funeral expenses diet	₹10,000/-
	₹7,62,530/-

3. The insurance company had pleaded before the Tribunal that there was no liability to pay. Though it conceded that the insurance policy had been issued (Ex. R3W1/1) in respect of the said vehicle covering the period of accident, it referred to a clause [*“legal liability (liability under contract excepted) for fatal or non fatal injury to any persons other than the insured’s own employees or workmen or employees of the owner of the works or premises or other firm connected with any other construction work thereon, or members of the insured’s family or of any other aforesaid, directly consequent upon or solely due to the construction of any property described in the Schedule”*], pleading that the policy had not been issued in

accordance with the provisions contemplated in Section 147 of the M.V. Act. The tribunal, however, rejected the said contention of the insurance company and directed it to pay.

4. By the appeal at hand, the insurer not only reiterates that it was not liable to indemnify in view of the aforementioned clause in the insurance policy, but also questions the calculation of dependency on the ground future prospects were wrongly added.

5. It is found that the claimants had not been able to prove by any cogent evidence the income of the deceased. The tribunal, thus, was constrained to assume the income on the basis of minimum wages (i.e. 5278). It, however, proceeded to compute the loss of dependency by adding 50% towards future prospects.

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 SCC 166.

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.

8. Since there was no clear evidence as to the income or progressive rise therein, the dependency loss has to be calculated without any such addition of future prospects. As the deceased was a bachelor, 50% is deducted towards personal and living expenses. Having regard to the age of the mother, the tribunal had chosen the multiplier of 15, which is not questioned. Thus, the loss of dependency is calculated as ($\text{₹}5278 / 2 \times 12 \times 15$) ₹4,75,020/- ₹ 4,76,000/-.

9. It is noted that the award under the non-pecuniary heads of damages is inadequate. Following the view taken in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshamma* (2015) 9 SCC 150, award of ₹1 Lakh is granted towards loss of love and affection and ₹25,000/- each are added towards funeral expenses and loss of estate. Thus, the total compensation payable to the claimants comes to (₹4,76,000/- + ₹1,50,000/-) ₹6,26,000/-.

10. Following the consistent view taken by this Court, the rate of interest is increased to 9% per annum from the date of filing of the petition till realization. [see judgment dated 22.02.2016 in MAC.APP. 165/2011 *Oriental Insurance Co Ltd v. Sangeeta Devi & Ors.*].

11. The award in favour of the claimants is modified accordingly.

12. Coming to the contention of the insurer as to it not being liable, all that needs to be said is that the insurance policy cannot be construed against the provision contained in first clause of proviso to Section 147(1). In absence of any proof about unlimited cover having been taken out, the deceased being an employee deployed on the motor vehicle, the liability of the insurance company is to be restricted to what would be the amount of compensation calculated under the Workmen' Compensation Act, 1923 now known as Employees' Compensation Act, 1923. The counsel for the appellant as well as fourth respondent jointly submitted that the amount of compensation calculated in accordance with Section 4 of the Employees Compensation Act, 1923 comes to ₹5,89,195/-. Thus, it is held that the liability of the appellant insurance company shall be restricted to pay the amount of ₹5,89,195/- with proportionate interest.

13. Though the insurance company shall be liable to pay the entire awarded amount to the claimants, as modified above, it shall have the liberty to recover the payment made in excess of its liability under the Employees' Compensation Act, 1923 from the owner of the vehicle.

14. By order dated 11.11.2013, the insurance company had been directed to deposit the entire awarded amount with upto date interest with the Registrar General of this court, from which 80% was allowed to be released, the balance kept in fixed deposit receipts with the UCO Bank, Delhi High Court Branch, New Delhi for a period of six months, to be renewed periodically. The Registrar General shall calculate the amount payable to the claimants in terms of the modified award and release the balance

refunding excess, if any, to the insurance company. If there is a short fall, the insurance company shall deposit the balance of its liability by requisite deposit with the tribunal within 30 days so that it can be released forthwith.

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

16. The appeal and the pending applications are disposed of in above terms.

MAY 18, 2016
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