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

Date of Decision: 19th February, 2016

+ **MAC.APP. 1119/2011**

UNITED INDIA INSURANCE CO LTD

..... Appellants

Through: Mr. Abhishek K Gola, Adv.

versus

MANJU & ORS

..... Respondents

Through: Ms. Madhu Bala Gautam, Adv. for
Ms. Manpreet Kaur, Adv. for R-1 to 5

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. By judgment dated 07.09.2011, the appellant insurance company has been called upon by the Motor Accident Claims Tribunal (the Tribunal) to pay compensation in the sum of ₹10,50,771/- with interest at 7.5% per annum awarded on the claim petition under Sections 166 and 140 of Motor Vehicles Act, 1988 (MV Act). The first two respondents herein (collectively, the claimants) had filed claim case registered as 899/2009. On the basis of findings returned that Kailash had died in motor vehicular accident that occurred at about 7 AM on 29.09.2009 at Ghewra Mor Chowk, Delhi on account of rash/negligent driving of bus bearing registration No.DL-1PB- 1226 (the offending vehicle) of ninth respondent (Delhi

Transport Corporation) concededly insured against third party risk with the appellants insurance company, the liability was fastened.

2. The solitary ground on which the appeal is pressed is with regard to the computation of compensation for calculating the loss of dependency, to be specific to question the addition of the element of future prospects of increase in the income of the deceased.

3. The appeal was filed in 2011 and has remained pending over past several years. It came up for hearing on 18.08.2015 but was adjourned with liberty granted for brief synopsis of arguments to be submitted. On 26.08.2015, adjournment was taken for the brief written synopsis to be filed. On 15.10.2015, none appeared on behalf of the claimants and brief synopsis having not been filed, the matter was adjourned yet again. Today, when the matter is taken up, a proxy counsel appears on behalf of the counsel for the claimants only to seek yet another adjournment. In the given backdrop, this request cannot be granted.

4. Having heard the arguments it is found that the ground on which the appeal is pressed is well founded.

5. 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.

6. 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. Lalita 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.

7. It is noted that the claimants were unable to prove on record the claim that he deceased was running the business of tent house and catering earning ₹20,000/- per month. In this view, the tribunal adopted, and rightly so, the notional income of ₹3,953/- per month it being the rate of minimum wages payable during the relevant period.

8. Since the deceased was claimed to be self employed, in view of the prevalent view, the factor of prospects of future increase cannot be allowed. Thus, the loss of dependency has to be recalculated. Having regard to the number of dependents, the Tribunal deducted, and rightly so, 1/5th of the income towards personal and living expenses. In this view, the monthly loss of dependency is calculated as $(3,953 \times 4 \div 5)$ ₹3,162/-.

9. On the multiplier of 16, as correctly adopted by the Tribunal (having regard to the age of 34 years of the deceased), the loss of dependency is calculated as $(3,162 \times 12 \times 16)$ ₹6,07,104/- rounded off to ₹6,08,000/-.

10. The Tribunal awarded ₹1 lakh towards love and affection, ₹25,000/- towards funeral charges, ₹10,000/- towards loss of consortium and ₹5,000/- towards loss of estate. It is noted that the awards on account of loss of consortium and loss of estate are highly inadequate.

11. In *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54, the Supreme Court had awarded ₹1 lakh towards loss of consortium in addition to ₹1 lakh on account of loss of love & affection. In *Shashikala V. Gangalakshamma* (2015) 9 SCC 150, similar awards were made under non-pecuniary heads and in addition ₹25,000/- awarded towards loss of estate. Thus, the damages awarded towards loss of consortium and loss of estate are increased to ₹1 lakh and ₹25,000/- each. This would be in addition to compensation in the sum of ₹1 lakh towards love & affection and ₹25,000/- towards funeral charges.

12. Thus, adding ₹2,50,000/- to the amount awarded on loss of dependency, the total compensation that deserves to be awarded in the case comes to ₹8,58,000/- (Rupees Eight Lakhs and Fifty Eight Thousand only).

13. The award granted by the Tribunal is modified accordingly. It shall carry interest at the rate levied and, except with modification mentioned herein below, shall be apportioned in the ratio as per directions in the impugned judgment.

14. By order dated 14.12.2011, the appellant had been directed to deposit the awarded amount with up-to-date interest with State Bank of India, Tis Hazari within the period specified. By order dated 14.05.2012, 50% of the said deposited amount was allowed to be released in favour of the claimants No.1 to 5 and 7.

15. Respondent No.6 having died, his name was deleted from amongst the claimants by order dated 18.08.2015. In terms of directions in the judgment, the share of the said claimant had been determined at 10% of the awarded amount. It is directed that the said share shall now be payable to his widow Sheela Devi (seventh respondent herein).

16. The Tribunal is directed to calculate the amounts payable to the six claimants as above, in terms of the award modified in light of above observations and directions. The amount lying in excess shall be refunded.

17. Statutory amount, if deposited, shall also be refunded.

18. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

FEBRUARY 19, 2016
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