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

Date of Decision: 17th May, 2016

\+ **MAC.APP. 1074/2013**

THE NEW INDIA ASSURANCE CO LTD ..... Appellant

Through: Mr. J. P. N. Shahi Adv.

versus

SH RAM AVTAR YADAV & ORS ..... Respondents

Through: Mr. Anshuman Bal, Adv. for R-1.

AND

\+ **MAC.APP. 489/2014**

SH. RAM AVTAR YADAV & ORS ..... Appellants

Through: Mr. Anshuman Bal, Adv.

versus

THE NEW INDIA ASSURANCE CO. LTD. ..... Respondents

Through: Mr. J. P. N. Shahi, Adv. for R-1.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Santosh, aged 19 years old, son of Ram Avtar Yadav (appellant in MAC appeal no.489/2014), died in a motor vehicular accident that occurred on 20.10.2010 involving negligent driving of bus bearing registration no.DL-1PB-0122 admittedly insured against third party risk with New India

Assurance Co. Ltd. (appellant in MAC appeal no.1074/2013). Ram Avtar Yadav (the claimant) filed an accident claim case (MAC appeal no.596/2011) impleading New India Assurance Co. Ltd. (then insurer), driver and owner of the offending vehicle as respondents, seeking compensation. The tribunal, by judgment dated 03.10.2013, upheld the case of death having occurred due to negligent driving of the offending vehicle which finding has attained finality. It awarded compensation in the sum of ₹6,77,526/- with interest at the rate of 7.5% per annum, directing the insurer to pay. The said amount includes ₹25,000/- towards loss of love & affection and funeral expenses and ₹10,000/- towards loss to estate, besides ₹6,17,526/- towards loss of dependency.

2. The tribunal assumed the income of the deceased on the basis of minimum wages of ₹5278/- and added component of future prospects to the extent of 50%, deducted one-half towards personal and living expenses and applied multiplier of 13, having regard to the age of the claimant.

3. The insurer in appeal questions the addition of the element of future prospects. *Per contra*, the claimant in appeal seeking enhanced non-pecuniary damages and rate of interest.

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 income of the deceased was worked out on the basis of minimum wages, in absence of any clear proof as to the employment or progressive rise in income, the loss of dependency has to be calculated without the element of future prospects. It, thus, is recomputed as (5278/2x12x13) ₹4,11,684/-, rounded off to ₹4,12,000/-.

7. 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 ₹1,00,000 on account of loss of love & affection and loss of consortium and ₹25,000/- each towards loss of estate and funeral expense are added. Thus, the total compensation payable in the case is computed as (4,12,000+ 1,50,000) ₹5,62,000/-.

8. 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 award is modified accordingly.

10. By order dated 25.11.2013 (in MAC appeal no.1074/2013), the insurance company had been directed to deposit the entire awarded compensation with up-to-date interest with the Registrar General and, out of such deposit, 80% was allowed to be released in favour of the first respondent, the balance kept in fixed deposit receipt with UCO Bank, Delhi High Court branch for a period of six months to be renewed periodically. The Registrar General shall now calculate the amount payable to the claimants in terms of the award modified as above and release the balance to them refunding the excess, if any, in deposit with statutory deposit, if made, to the insurance company.

11. Both the appeals are disposed of in above terms.

R.K. GAUBA
(JUDGE)

MAY 17, 2016
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