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

Date of Decision: 6th April, 2016

\+ MAC.APP. 349/2015

THE ORIENTAL INSURANCE CO. LTD ..... Appellant
Through: Mr. Pradeep Gaur, Adv.

versus

SMT. SINDHU DEVI & ORS .... Respondents
Through: None.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Mukesh Singh, 33 years old at the relevant point of time, working as a driver, died as a result of injuries suffered in a motor vehicular accident that occurred at 6.30 a.m. on 4.5.2011 involving rash driving of a truck bearing registration no. GJ 6TT 6248 (offending vehicle), which was admittedly insured against third party risk with the appellant insurance company (insurer). His seven dependant family members (first to seventh respondents herein) instituted an accident claim case under Sections 166 and 140 of Motor Vehicles Act, 1988 (MV Act) registered as Suit no. 550/2011 on 10.06.2011, impleading the insurer, driver and owner of the offending vehicle as respondents. By judgment dated 17.01.2015, the tribunal awarded compensation in the sum of Rs. 20,38,110/- with interest @ 9% per annum, calculating it thus:-

Loss of financial dependency *Rs. 18,03, 110/-*

Loss of Love & affection	*Rs.01,00,000/-*
Loss of Estate	*Rs.00,10,000/-*
Funeral expenses	*Rs.00,25,000/-*
Loss of consortium to wife	*Rs.01,00,000/-*
Total	***Rs.20,38,110/-***

2. The grievance of the insurance company which has been fastened with the liability to pay is only with regard to addition of future prospects of increase in income to the extent of 50% added to the minimum wages (Rs. 7826/- per month) assessed notionally by the tribunal.

3. 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.

4. 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.

5. Since there was no proof of any progressive rise in the income, the element of future prospects is kept out of consideration. Since number of dependents was seven, $1/5^{th}$ is deducted towards personal & living expenses and, therefore, monthly loss of dependency comes to (7826 x 4÷ 5) Rs. 6261. On the multiplier of 16, the total loss of dependency comes to (6261x12x16) Rs. 12,02, 112/-, rounded off to Rs. 12,03,000/-. Adding the non-pecuniary damages awarded by the tribunal in the total sum of Rs. 2,35,000/-, the total compensation in the case comes to (12,03,000 + 2,35,000) Rs. 14,38,000/-.

6. The compensation is reduced accordingly. It shall, however, carry interest as levied by the tribunal.

7. By order dated 22.04.2015, the insurance company had been directed to deposit 70% of the awarded amount with proportionate interest with UCO Bank, Delhi High Court Branch out of which Rs. 2,00,000/- was released to the claimant (wife) and Rs. 1,00,000/- to the sixth respondent (mother). The balance was directed to be kept in fixed deposit receipt for a period of one year to be renewed from time to time. The Registrar General shall now calculate the balance payable to the claimants in terms of the award modified as above and release the same in accordance with the above directions. If the deposit made by the insurer is found to be in excess of its liability, the same shall be refunded. Conversely, if there is a shortfall, the insurer shall be obliged

to deposit the same with the tribunal within 30 days for it to be released to the claimant.

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

9. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

APRIL 06, 2016/nk