$~16

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

Date of Decision: 30th March, 2016

\+ MAC.APP. 1152/2013

SHRIRAM GENERAL INSURANCE CO LTD ..... Appellant

Through: Mr. P. Acharya, Adv.

versus

HUKAM SINGH& ORS ..... Respondents

Through: Mr. S.N. Parashar, Adv. for R-1 to 4.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Surender Singh died as a result of injuries suffered in a motor vehicular accident that occurred at about 9 p.m. on 07.06.2012 involving truck bearing No. HR 387274 (the offending vehicle). His parents, wife and minor son brought an accident claim petition under Sections 166 and 140 of Motor Vehicles Act, 1988 (MV Act), registered as MACT No. 420/2012, on 19.11.2012 before the motor accident claims tribunal (the tribunal) impleading the driver, owner and insurer (appellant) of the said offending vehicle as respondents on the plea that accident had occurred due to its rash/negligent driving. This contention was upheld and the tribunal awarded compensation in the sum of ₹ 19,64,712/- with interest @ 7.5 % from the date of filing of the petition till realization, which includes ₹ 2,25,000/-

under non-pecuniary heads of damages besides loss of dependency ₹ 17,39,712/-

2. The insurance company, fastened with the liability to pay, has come up in appeal questioning the calculation of loss of dependency pointing out that future prospects were wrongly added even though income was notionally assessed on the minimum wages payable to the skilled worker (₹ 8,528/- per month). *Per contra*, the claimants (first to fourth respondents herein) are aggrieved with no award having been made under the head of loss of estate.

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 SCC166.

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 income was notionally assessed, in absence of any income proof, there being no evidence of any progressive rise in the income, loss of dependency has to be worked out without any addition of future prospects. Since the deceased was 26 year old, having a family including wife and minor child, besides parents, deduction on account of personal & living expenses should have been made to the extent of 1/4th rather than 1/3rd as done by the tribunal, the income admitted by the father being insignificant. Thus, the total monthly loss of dependency comes to (8,528 x 3 ÷ 4) ₹ 6396. On the multiplier of 17, the total loss of dependency comes to (6,396 x 12 x 17) ₹ 13,04,748/-. Besides the non-pecuniary damages of ₹ 2,25,000/- granted by the tribunal, ₹ 25,000 deserves to be further added for loss of estate. Therefore, the total compensation in the case comes to (13,04,748 + 2,50,000) ₹ 15,54,748/- rounded off to ₹ 15,55,000/-

6. 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.

7. The award is modified as above.

8. By order dated 13.12.2013, the insurance company had been directed to deposit the entire awarded amount with upto date interest, and out of the

said deposit, 80% was allowed to be released to the claimants as per the terms and conditions fixed by the tribunal.

9. The Registrar General is directed to calculate the sums payable to the claimants in terms of the above directions and release the same with proportionate interest in their favour in terms of the aforementioned direction. If there is any short fall, the same shall be deposited by the insurance company with the tribunal within 30 days of today. On the other hand, if excess has been deposited or released, the same shall be refunded.

10. The statutory amount, if paid, shall also be refunded.

11. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

MARCH 30, 2016/nk