$~13

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

Date of Decision: 18th May, 2016

\+ MAC.APP. 1159/2013

NATIONAL INSURANCE CO LTD ..... Appellant

Through Mr.Amit Gaur, Adv.

versus

SH SANJEEV TYAGI & ORS ..... Respondents

Through Ms.Pratibha Sharma, proxy counsel for Ms.Payal Raghav, Adv.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The first respondent (the claimant) suffered injuries in a motor vehicle accident that occurred on 24.08.2009 involving negligent driving of a truck bearing registration no. HR-38-J-7045 (the truck) which was admittedly insured against third party risk with the insurance company (the insurer). He filed MAC petition No. 531/2010 on 17.11.2009 impleading the driver, owner and insurer as parties. By judgment dated 04.10.2013, the Tribunal awarded compensation in the sum of ₹7,85,630/- with interest @ 9% per annum in his favour calculating different heads as mentioned at page No. 19 &20 of the paper book.

2. The insurer which has been burdened with the liability to pay, questions the award on account of the loss of earning due to injuries, especially loss of income in future due to the disability to the extent of 40%, alongside the award under the non-pecuniary heads.

3. Having heard arguments and having gone through the record, this

court finds that the Tribunal has correctly assumed the income of the deceased on the basis of minimum wages of a matriculate i.e. ₹ 4401/-, since the claimant could not muster any clear proof about his employment or earnings. The Tribunal found on the basis of the disability certificate (Ex.PW-1/10) that the claimant has suffered permanent disability to the extent of 40%, though the functional disability was taken at 20%. It, however, calculated the income by adding 30% towards future prospects.

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. In absence of clear proof as to income or progressive rates, income has to be calculated without any such element of future prospects. Thus, the total loss of future earnings after taking the functional disability as 20% comes to (₹4401x20/100x12x15) ₹1,58,436/- rounded off to ₹1,59,000/-.

7. Having regard to the nature of injuries suffered and the period of treatment, as also the consequent handicap, the award under the pecuniary heads of damages cannot be grudged. Thus, the compensation awarded has to be reduced by (2,05,956-1,59,000) ₹46,956/-. Compensation is, thus, reduced to (7,85,627-46956/-) ₹7,38,671/- rounded off to ₹7,39,000/-. It shall carry interest as levied by the tribunal.

8. By order dated 18.12.2013, the insurance company had been directed to deposit the entire awarded amount with interest with the Registrar General of this court within the specified time from which 80% to be released in favour of the claimant and balance to be kept in fixed deposit receipt. Registrar General shall now recalculate the amount and would release the balance and refund the excess, if any, to the insurance company.

9. Statutory deposit, if made, shall also be refunded.

10. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

MAY 18, 2016
mr