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

Date of Decision: 29th April, 2016

\+ **<u>MAC.APP. 1179/2013</u>**

THE NEW INDIA ASSURANCE CO LTD ..... Appellant
Through: Mr. Panjak Seth with Mr. Shoumik Mazumdar, Advs.

versus

SH RAJESH PRASAD VERMA & ORS ..... Respondents
Through: Mr. Mithilesh Kumar Gupt, Adv. for R-1 to 7
Mr. Vikram Saini, Adv. for R-9

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

<u>JUDGMENT</u>

<u>R.K.GAUBA, J (ORAL):</u>

1. Sarita Kumari, aged 35 years, died in a motor vehicular accident that occurred on 17.08.2012 involving negligent driving of bus bearing No.HR 55Q 4754 (offending vehicle), which was admittedly insured against third party risk with the appellant insurance company (insurer) for the period in question. Her husband and six children, first to seventh respondents (collectively, the claimants) instituted an accident claim case (MACT case no.377/2012) on 13.09.2012 impleading, amongst others, the insurer as respondents. The tribunal held inquiry and, by judgment dated 30.07.2013, upheld the case of negligent driving of the offending vehicle as the cause for the accident. It awarded compensation in the sum of ₹20,91,720/- with

interest in favour of the claimants, the said amount inclusive of ₹25,000/- towards loss of love & affection and ₹10,000/- towards cremation charges and loss of consortium besides ₹20,46,720/- towards loss of dependency. In arriving at the said amount of compensation, the tribunal assumed the income of the deceased at ₹8,528/-, it being the rate of minimum wages payable to a skilled worker towards matriculate but added 25% towards future prospects and adopted the multiplier of 16.

2. The insurer which has been fastened with the liability is in appeal questioning the computation of compensation.

3. The tribunal has referred to judgment dated 30.01.2012 in MAC.APP.No.590/2011 in matter titled as *Royal Sundaram Alliance Insurance Col Ltd. v. Master Manmeet Singh & Ors.* But, the case of the claimants themselves was that she was engaged in private shops to earn livelihood. Therefore, her case could not have been equated with that of a housewife.

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 has been notionally assessed, the element of future prospects cannot be allowed to be factored in. Having regard to the number of dependents, $1/5^{th}$ would need to be deducted towards personal & living expenses. Thus, the monthly loss of dependency comes to (8,528 x 4 ÷ 5) ₹6,822/-. On the multiplier of 16, the total loss of dependency is worked out as (6,822 x 12 x 16) ₹13,09,824/- rounded off to ₹13,10,000/-.

7. It is noted that the award under the non-pecuniary heads of damages is on the lower side. Further, no award has been made towards loss of estate. 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 lakh each 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 comes to (13,10,000 + 2,50,000) ₹15,60,000/-.

8. The award is modified accordingly.

9. Needless to add, it shall carry interest as levied by the tribunal.

10. The insurer had been directed by order dated 28.12.2013 to deposit the entire awarded amount with up-to-date interest with the Registrar General and out of such deposit, 80% was allowed to be released, the balance kept in fixed deposit receipt.

11. The Registrar General shall now calculate the sums payable to the claimants and release the same with proportionate interest in their favour in terms of the aforementioned direction, refunding the excess, if any, with statutory deposit to the insurer. Conversely, if more amount is required to be paid, the insurer shall be directed to deposit the same with the tribunal within 30 days of this judgment whereupon it shall be released with interest accordingly.

12. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

APRIL 29, 2016
VLD