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

Date of Decision: 27.05.2016

+ **MAC.APP. 368/2015**

SHRI RAM GENERAL INSURANCE CO LTD

..... Appellant
Through Mr. Kamal Deep, Adv.

versus

KANCHAN & ORS

..... Respondent
Through Mr. S N Parashar, Adv.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. On 14.11.2013, Anil Kumar (23 year old) died as a result of injuries suffered in a motor vehicular accident involving negligent driving of a truck bearing registration No.HR74 5880 (offending vehicle) admittedly insured against third party risk with the appellant insurance company (insurer) for the period in question. On the claim petition (suit No.162/14) instituted on 28.01.2014 by the dependent family members, first to third respondents herein (claimants), the tribunal, by judgment dated 10.03.2015, after inquiry, returned a finding affirming the case about death having occurred due to negligent driving of the offending vehicle. It proceeded to award

compensation in the sum of ₹23,52,232/- with interest at 9% per annum asking the insurer to pay, calculating thus :

Head of compensation	Amount (in Rs.)
Loss of dependency	21,17,232/-
Loss of Love and affection	1,00,000/-
Funeral expenses	25,000/-
Loss of Estate	10,000/-
Loss of Consortium	1,00,000/-
Total	23,52,232/-

2. The insurer is in appeal questioning the element of future prospects of increase to the extent of 50% in a case where income was calculated notionally on basis of minimum wages at ₹9,802/-. *Per contra*, the counsel for the claimants submits that the non-pecuniary damages awarded are inadequate.

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. Lalita 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 no cogent proof of progressive rise in income was mustered, the element of future prospects needs to be kept out. The loss of dependency is calculated afresh without the element of future prospects as $(9,802 \times 2 \div 3 \times 12 \times 18)$ ₹14,11,488/- rounded off to ₹14,12,000/-.

6. Having regard to the date of accident and death, following the view taken in MAC.APP.No.160/2015 MAC.APP. 160/2015 *Shriram General Insurance Co Ltd v. Usha* decided by this court on 05.05.2016, non-pecuniary damages in the sum of ₹1,50,000/- each towards loss of love & affection and towards loss of consortium and ₹50,000/- each towards loss of estate and funeral expense are added. Hence, the total compensation payable in the case comes to $(14,12,000 + 4,00,000)$ ₹18,12,000/-. The award shall carry interest at 9% per annum as levied by the tribunal.

7. It is noted that the tribunal in the impugned judgment had specified the amounts payable to the dependents/claimants. By order dated 20.04.2015, the insurance company had been directed to deposit 70% of the

awarded amount with proportionate interest within six weeks, which was allowed to be released to the claimants. Since the compensation has been reduced, it is directed that the amounts already released in favour of the second and third respondents shall be treated as their share in the compensation, the entire balance now payable to go to the first claimant (Kanchan) alone. The insurance company shall deposit balance of its liability, if any, with the tribunal within 30 days. Conversely, if excess has been released, the tribunal shall proceed to recover the same, upon application being made by the insurer, from the portions held in fixed deposit.

8. The statutory deposit, if made, shall be refunded.

9. The appeal is disposed of in above terms.

(R.K. GAUBA)
JUDGE

MAY 27, 2016
VLD