$~1 & 19

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

**Date of Decision: 09.05.2016**

\+ MAC.APP. 418/2015

VIJAY KUMAR SINGH & ORS ..... Appellants

Through: Mr. J.P.N. Shahi, Advocate

versus

THE ORIENTAL INSURANCE CO LTD ..... Respondent

Through: None

\+ MAC.APP. 161/2014 and CM No.5402/2014

THE ORIENTAL INSURANCE CO LTD ..... Appellant

Through: None

versus

VIJAY KUMAR SINGH & ORS ..... Respondents

Through: Mr. J.P.N. Shahi, Advocate

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

**JUDGMENT**

**R.K.GAUBA, J (ORAL):**

1. Deepak Kumar Singh, 21 years old, a bachelor, died as a result of the injuries suffered in a motor vehicular accident that occurred on 02.07.2006

on account of the negligent driving of a motor vehicle described as a rural transport vehicle bearing registration no.DL-1V-7855 (offending vehicle) admittedly insured against third party risk with the Oriental Insurance Co. Ltd. (appellant in MAC 161/2014). His father, two younger brothers and grand- mother (who died during the pendency of the proceedings) instituted an accident claim case (petition no.262/2013) on 28.03.2007 seeking compensation under Sections 166 and 140 of the Motor Vehicles Act, 1988 (M.V. Act) in which the said insurance company (insurer) was impleaded in addition to the driver and the owner of the offending vehicle as party respondents.

2. By judgment dated 16.12.2013, the Motor Accident Claims Tribunal (tribunal) upheld the case of the claimants (appellants in MAC 418/2015) about the death having occurred due to the negligent driving of the offending vehicle. The said finding has attained finality as it was not challenged. By the said judgment, the tribunal awarded compensation in the sum of Rs.11,86,000/- calculating it thus :

| | | |
|---|---|---|
| 1. | Loss of Dependency | ₹11,76,000/- |
| 2. | Loss of Love and Affection | ₹25,000/- |
| 3. | Funeral Expenses | ₹25,000/- |
| 4. | Loss of Estate | ₹10,000/- |
| | | ₹12,36,000/- |
| | Less: interim award vide order dated 24.11.2008 | ₹50,000/- |
| | TOTAL | ₹11,86,000/- |

2.1 The insurer was called upon to pay the compensation with interest at the rate of 9% p.a. from the date of filing of the petition till realization but in view of the finding about breach of the terms and conditions of the policy, it was granted right to recover the same from owner of the offending vehicle (Dwarka Prasad Gupta).

3. The insurer by his appeal (MACA 161/2014) questions the computation of loss of dependency, on the ground that salary was wrongly assumed to be Rs.7,000/- and the element of future prospects was wrongly added.

4. *Per contra*, the claimants by their appeal (MACA 418/2015) seek enhancement of the compensation mainly contending that the award under non-pecuniary heads of damages is inadequate.

5. Having heard the learned counsel for the insurance company who only appeared, it is found that its appeal taking exception to the assumption about income and element of future prospects must be accepted. At the same time, the claimants' grievance about non-pecuniary damages needs to be addressed.

6. Though the first claimant (father) appearing as PW-1 relied upon the salary certificate (Ex. PW1/A), the said document was not strictly proved. No evidence from the side of the employer was called in. Mere production of such a document cannot suffice. In absence of proper proof as to the employment of the deceased, the assessment of the income has to be made on the basis of minimum wages. Since the deceased was a matriculate, minimum wages of Rs.3719/- may be assumed to be the monthly income.

7. 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.

8. 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.

9. Since the income of the deceased is notionally assessed, the element of future prospects need not be factored in. Having regard to the fact that the deceased was a bachelor and the age of the claimant father was 41 years, the loss of dependency has to be calculated with 50% deduction towards personal and living expenses and on the multiplier of 14. Thus, the dependency loss is calculated as ( ₹ 3719/2 x 12 x 14) Rs.3,12,396/-, rounded off to Rs.3,15,000/-.

10. Following the law laid down in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshmamma* (2015) 9 SCC 150, an award of Rs.1 Lakh towards loss of love and affection and Rs.25,000/- each towards funeral expenses and loss to estate are added. Thus, the total compensation in the case is computed as ( ₹ 3,15,000/- + ₹ 1,50,000/- ) ₹

4,65,000/-. An amount of ₹50,000/- paid in terms of the interim award shall be adjusted. The net award shall carry interest at the rate of 9% p.a. as levied by the tribunal.

11. By order dated 17.02.2014, the insurance company had been directed to deposit the entire awarded amount with upto date interest with the Registrar General of this court, within the period specified and out of the same, 70% was allowed to be released to the claimants, the balance kept in fixed deposit receipt with UCO Bank, Delhi High Court Branch, New Delhi with a provision for renewal.

12. The Registrar General shall now calculate the amount payable to the claimants in respect of the modified award. If any amount is outstanding, the same shall be now released. The amount deposited by the insurance company over and above its liability under the modified award with statutory amount, if deposited, shall be refunded.

13. Both appeals and the pending application are disposed of in above terms.



**R.K. GAUBA**
**(JUDGE)**

**MAY 09, 2016**
**yg**