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

Date of Decision: 27th January, 2016

+ **MAC.APP. 377/2015**

ICICI LOMBARD GENERAL INSURANCE CO LTD

..... Appellant

Through Ms. Suman Bagga, Adv. and Mr.
Pankaj Gupta, Advs.

versus

SAMEENA HASAN & ORS

..... Respondents

Through Mr. Jatinder Kumar, Adv. for R-1
to 4

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. A very short issue is raised in this appeal under Section 173 of Motor Vehicles Act, 1988 ("MV Act") by the insurance company concerning claim case No.568/2014 decided by the Motor Accident Claims Tribunal ("the Tribunal") by judgment dated 10.02.2015. The claim petition was filed by the first four respondents against the fifth respondent and the appellant insurance company for compensation on account of death of Mahboob Hassan in motor vehicular accident that occurred at about 8 AM on 01.09.2013 involving Tata Tempo Ace bearing registration No.DL 1RL 8185 ("the offending vehicle") on Muradabad-Delhi Road, PS Garh Mukteshwar, Hapur. The fifth respondent herein was statedly the driver of the said vehicle which was admittedly insured with the appellant company against third party risk.

The Tribunal awarded compensation in the sum of ₹15,63,705/- on the basis of multiplier of 15 having regard to the age of the deceased (38 years), adopting the notional income of ₹7,722/- as per minimum wages for unskilled workers prevalent at that time, factoring in future prospects of increase in income to the extent of 50%, adding non-pecuniary damages in the sum of ₹1 lakh towards loss of consortium, ₹25,000/- on account of funeral expenses, ₹1 lakh towards loss of care and guidance of minor child and ₹10,000/- towards loss of estate.

2. The narrow area of controversy raised is concerning the factor of future prospects. The learned counsel for the appellant company submitted that the view taken by a bench of two Hon'ble Judges of Supreme Court in *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121 affirmed by a bench of three Judges in *Reshma Kumari V. Madan Mohan* (2013) 9 SCC 65 should prevail.

3. In the case reported as *Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121, the 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. This applies to the matter at hand because the claimant here pleaded about gainful employment at a fixed salary and has not led any evidence showing the salary was subject to any periodic increase.

5. In view of the above, the compensation on account of loss of dependency needs to be recomputed. The deceased has been assessed to be in receipt of ₹7,722/- per month. Since the number of members of the family dependent upon him was four, the Tribunal correctly deducted $\frac{1}{4}$ th towards personal expenses. The monthly loss of dependency thus comes to ₹5,792/- per month. On the multiplier of 15, which was correctly adopted, the total loss of dependency is calculated as (5792 x 12 x 15) ₹10,42,560/- rounded off to ₹10,43,000/-. The learned counsel for the claimant submitted that additional amount of compensation under the non-pecuniary head of loss of services to the family should be added. He argued that he had led evidence in this regard on the file of the Tribunal. Having regard to the heads under which non-pecuniary damages has already been awarded, this request cannot be granted.

6. The total compensation payable to the claimants, thus, is computed at ₹12,78,000/-.

7. The award of compensation is, thus, modified. Instead of the amount awarded by the Tribunal, the claimants shall be entitled to compensation of ₹12,78,000/- with interest at the rate awarded by the Tribunal, to be paid in shares as determined in the impugned judgment.
8. By order dated 24.04.2015 the Tribunal had directed the appellant to deposit 75% of the awarded with proportionate interest out of which ₹2 lakhs were released to the first respondent, the balance directed to be kept in FDR for a period of one year to be renewed from time to time.
9. The claims Tribunal is directed to calculate the amount payable to the claimants in terms of modified award and issue necessary directions for the sums to be released out of the amount deposited in terms of above noted directions. Should any further amount be found payable, the insurance company shall be liable to deposit with the Tribunal within 30 days. Conversely, if any excess has been deposited, the same shall be released to the insurance company.
10. The statutory deposit, if made, shall be refunded.
11. The trial court record, be sent back to the Tribunal.
12. Parties are directed to appear before the Tribunal on 24.02.2016.

R.K. GAUBA
(JUDGE)

JANUARY 27, 2016
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