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

Date of Decision: 7th April, 2016

+ **MAC.APP. 422/2015 & CM Nos.9167/2015 and 18055/2015**

BAJAJ ALLIANZ GENERAL INSURANCE CO LTD.

..... Appellant

Through: Mr. Rajat Brar, Adv.

versus

SITA AND ORS.

..... Respondent

Through: Mr. Jatinder Kamra, Adv. for R-1 to R-9

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Sumiran was travelling in a tractor bearing registration No.HR 10G 3015 (offending vehicle), loaded with fodder (*bhoosa*), on 05.07.2008 when it met with an accident at about 6 AM in the area of Sri Nagar, Delhi resulting in his death. The dependent family members of Sumiran, first to ninth respondents (claimants), brought accident claim case (MACT No.133/2014) on 14.08.2008 seeking compensation impleading the appellant insurance company as one of the party respondents, it admittedly having issued an insurance policy covering third party risk for the period in question in respect of the offending vehicle in the name of the registered owner of the offending vehicle (Rattan Singh, since deceased) now

represented by his legal heirs. In addition to the insurer, the driver and registered owner were impleaded as parties.

2. The tribunal, by judgment dated 13.03.2015, upheld the case of the claimants that accident had occurred due to negligence on the part of the tenth respondent herein (driver), and awarded compensation in the sum of Rs.5,89,524/- with interest at 9% per annum, which includes Rs.1 lakh each towards loss of consortium and loss of love and affection, Rs.30,000/- towards funeral expenses, besides loss of dependency. In computing the loss of dependency, the tribunal assumed the notional income of the deceased at Rs.3,633/- per annum, equivalent to the minimum wages, and added 30% towards future prospects, applying the multiplier of 13, (since the deceased was 48 years old), after deduction of 1/5th towards personal & living expenses.

3. The insurance company which has been fastened with the liability presses the appeal against the award on basis of two contentions; first that the addition of future prospects was improper and, second, that the deceased was a gratuitous passenger and, therefore, not covered by third party risk.

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 SCC166.

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 evidence would not show any regular income and there is no proof of any periodic rise in earnings, the element of future prospects has to be kept out of consideration. The monthly loss of dependency, after deducting 1/5th towards personal and living expenses comes to (3,633 x 4 ÷ 5) Rs.2,906.4. On the multiplier of 13, the loss of dependency comes to (2,906.4 x 12 x 13) Rs.4,53,398/-, rounded off to Rs.4,54,000/-. Adding the non-pecuniary damages the total compensation comes to (4,54,000 + 2,30,000) Rs.6,84,000/-. The award is reduced accordingly. It shall, however, carry interest as levied by the tribunal.

7. The second contention of the insurance company must be rejected for the reason the evidence shows that the deceased was travelling with goods carried at the instance of his employer.

8. By order dated 27.05.2015, the insurance company had been directed to deposit 50% of the of the awarded amount with proportionate interest which was directed to be held in fixed deposit receipt with UCO Bank, Delhi High Court Branch for a period of one year. The Registrar General shall now calculate the amount payable to the claimants in terms of the award modified as above and release the same from out of the deposit made by the insurance company in terms of the said earlier order, refunding excess, if any, and directing the insurance company to pay further, if there is a shortfall, within 30 days from today.

9. The statutory amount, if deposited, shall be refunded.

10. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

APRIL 07, 2016
VLD