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

Date of Decision: 18th March, 2016

\+ **MAC.APP. 613/2015**

SUMITRA & ORS ..... Appellants

Through: Mr. Anshuman Bal, Adv.

versus

NEW INDIA ASSURANCE CO LTD & ORS ..... Respondents

Through: Mr. Sanjay Kumar Dubey, Adv. for Ms. Shuchi Singh, Adv. for R-1

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Lallan, a driver by avocation, died in a motor vehicular accident that took place at 11 PM on 05.10.2011 within the jurisdiction of police station Samalkha, Panipat, Haryana on account of rash/negligent driving of motorcycle described as HR 55K 9240, admittedly insured against third party risk with the first respondent herein (insured) for the period in question. On petition under Sections 166 and 140 of Motor Vehicles Act, 1988 (MV Act) being preferred on 06.02.2012 by his wife joining his six children (collectively the claimants), registered as suit No.54/2012, the motor accident claims tribunal (tribunal) held inquiry in proceedings in which the insurer admitted its liability to indemnify the claim of the third party under the insurance policy taken out by the registered owner of the

truck for the period in question. The tribunal awarded compensation in the sum of Rs.11,84,104/- with interest at 9% per annum from the date of filing of the petition till realization, the said award including loss of financial dependency calculated at Rs.9,49,104/-.

2. The appeal at hand has been filed seeking enhancement of the compensation on three grounds. It is argued that the income of the deceased as claimed by the widow (PW1) through her affidavit (Ex.PW1/A) to be Rs.10,000/- per month should have been accepted. The second contention is that the element of future prospects should have been added and the third plea is that the deduction on account of personal and living expenses to the extent of $1/4^{th}$ was improper as the claimants were seven in number.

3. On the first contention, the appellants (claimants) rely on judgments of the Supreme Court in *Minu Rout v. Satya Pradyumna Mohapatra* (Civil Appeal No.7368/2013 dated 02.09.2013) and *Kala Devi v. Bhagwan Das Chauhan* (Civil Appeal No.9972/2014 dated 31.10.2014) and of learned single judge of this Court in *Mahrunisha v. Mohd. Naseem Haider* (MAC.APP.No.360/2011 dated 28.02.2012); *Sunita Devi v. Hawa Singh* (MAC.APP.No.970/2011 dated 24.08.2012); *Oriental Insurance Co. Ltd. v. Sinadhu Devi* (MAC.APP.No.96/2014 dated 19.02.2015); *United India Insurance Co. Ltd. v. Mohan Singh Bisht* (MAC.APP.No.395/2012 dated 22.04.2015)

4. Having heard the learned counsel for the appellants at length and gone through the tribunal's record, this Court is not inclined to agree with the plea submitted. Whilst it is correct that the tribunal is duty bound to make a fair assessment of the earnings of the deceased to compensate the loss of

dependency, the assessment cannot be without some material being brought on record in support. In absence of some material on which conclusions can be safely drawn, the tribunal correctly adopted the minimum wages of skilled labourer as the benchmark. The case law cited at bar is distinguishable on facts.

5. 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.

6. 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.

7. Since there is no evidence adduced with regard to the progressive rise in the income of the deceased, the element of future prospects could not have been factored in.

8. The tribunal noted that the claimants include three married daughters, who obviously could not have been financially dependent on the deceased. In these circumstances, the personal and living expenses have been correctly deducted to the extent of 1/4th.

9. The appeal is devoid of substance and is dismissed.

R.K. GAUBA
(JUDGE)

MARCH 18, 2016
VLD