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

Date of Decision: 15th March, 2016

+ **MAC.APP. 630/2015**

SULTAN SINGH RANA & ANR ..... Appellant
Through: Mr. Dheeraj, Adv.

versus

PRADEEP KUMAR & ORS (THE UNITED INDIA INSURANCE CO LTD) ..... Respondent
Through: Mr. P Acharya, Adv. for R-3

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The appellants had filed claim petition under Sections 166 and 140 of Motor Vehicles Act, 1988 (MV Act) on 31.03.2006 before the motor accident claims tribunal (tribunal) seeking compensation on account of death of their son Amit Rana then aged 18 years, in a motor vehicular accident that had occurred on 26.12.2005 involving the motor vehicle described as Scorpio bearing registration No.DL 4C 8866, admittedly insured against third party risk with the third respondent (insurer) for the period in question.

2. The tribunal granted the said claim petition by judgment dated 21.05.2013 awarding compensation in the sum of ₹5,25,312/- in favour of the claimants (parents), calculating the compensation thus :

Sl. No	Compensation under various heads	Amount awarded
1.	Loss of dependency	Rs. 3,90,312/-
2.	Loss of love & affection	Rs. 1,00,000/-
3.	Funeral expenses	Rs. 25,000/-
4.	Loss of estate	Rs. 10,000/-
5.	Total	Rs. 5,25,312/-

3. The claimants have felt aggrieved on the ground that while calculating the loss of dependency, the tribunal did not add the element of future prospects and further that the award under the non-pecuniary heads of damages was inadequate.

4. Having heard learned counsel and gone through the tribunal's record, this Court finds no substance in the appeal.

5. The deceased was still a young person aged 18 years whose engagement in any avocation was not proved. Though it was vaguely claimed that he was earning by taking tuitions, no clear proof was adduced. In these circumstances, the tribunal assessed the income notionally on the basis of minimum wages payable to a matriculate.

6. 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.

7. 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.

8. In above facts and circumstances there is no error in the calculation of loss of dependency. Following the view taken in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54, the award under head of non-pecuniary damages also cannot be faulted.

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

R.K. GAUBA
(JUDGE)

MARCH 15, 2016
VLD