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

Date of Decision: 21st January, 2016

+ MAC.APP. 1012/2015

RAM DAYAL & ANR

..... Appellants

Through: Mr. S N Parashar and Mr. Lokesh
Kumar, Advs.

Versus

RAM NIBASH & ORS

(ICICI LOMBARD INS CO LTD)

..... Respondent

Through: Mr. Pankaj Gupta, Adv for Ms.
Suman Bagga, Adv. for R-3

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. This appeal under Section 173 of Motor Vehicles Act, 1988 (“the MV Act”) has been presented by the claimants primarily to raise the grievance that the compensation awarded is not just and proper. The third respondent (insurer) has appeared on advance notice.

2. The learned counsel for the appellant has been heard at the stage of admission. It is noted from the certified copy of the judgment dated 24.09.2015 passed by the Motor Accident Claims Tribunal (“Tribunal”) in MACT No.350/11 registered on the basis of claim petition presented by the appellant under Sections 166 and 140 of MV Act for compensation on account of death of their 26 year old son Sanjay in motor vehicular accident that occurred on 09.07.2011 at about 3.30 PM at Shahpura District, Jaipur, Rajasthan involving truck bearing

registration No.HR 55L 6522 (“the offending vehicle”), that compensation in the sum of Rs.6,35,916/- has been awarded. The claimants are parents of the deceased and concede that he was unmarried. The Tribunal found the first respondent to be guilty of rash/negligent driving of the offending vehicle causing the fatal accident. The second respondent has been held vicariously liable on the ground he is owner of the offending vehicle. The loss of dependency has been worked out, assuming the income of the deceased notionally at Rs.6,422/-, equivalent to the minimum wages payable to an unskilled worker during the relevant period, applying the multiplier of 13, having regard to the age of the mother (46-47 years) at the relevant point of time.

3. The grievance of the claimants basically is that the income should have been assessed notionally on the basis of minimum wages payable to a skilled worker as the father of the deceased testified that he was earning his livelihood as a cobbler. It is also submitted that the multiplier should have been adopted having regard to the age of the deceased rather than that of the claimants. Reliance is placed on *Amrit Bhanu Shali & Ors. V. National Insurance Company Ltd.* 2012 (6) SCALE; *Sanobanu Nazirbhai Mirza & Ors. V. Ahmedabad Municipal Transport Service* 2013 ACJ 2733 and *Mohd. Hasnain & Ors. V. Jagram Meena & Ors.* 2014 (142) DRJ 303. The appellants also submit that the benefit of future prospects has been wrongly denied in the computation of compensation.

4. Having heard the learned counsel for the appellant, this Court finds the appeal to be unmerited on all counts. Mere oral word that the deceased was working as a cobbler does not make him a skilled worker.

There is no proof as to whether he had acquired any special skills so as to be treated as a skilled worker. In these circumstances, the Tribunal has correctly adopted the minimum wages of an unskilled worker.

5. It is well settled that the choice of multiplier is determined by the age of the deceased or that of the claimants, whichever is higher. [*Kerala State Road Transport Corporation V. Susamma Thomas* (1994) 2 SCC 176; *U.P. SRTC V. Trilok Chandara* (1996) 4 SCC 362; *New India Assurance Co. Ltd. V. Shanti Pathak (Smt.) & Ors.* (2007) 10 SCC 1 and *Sarla Verma V. Delhi Transport Corporation* (2009) 6 SCC 121]. In this view of the matter the case law cited at the bar cannot apply.

6. The question of future prospects is still at large. The Supreme Court, in the case of *Sarla Verma* (supra), *inter alia*, held that in the case of self-employed or those on a fixed salary, the element of future prospects cannot be factored in. This view was affirmed by the three judge bench of the Supreme Court in *Reshma Kumari V. Madan Mohan* (2013) 9 SCC 65. Though by a subsequent judgment of another three judges bench of the Supreme Court in the case of *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *National Insurance Company Ltd. V. Pushpa & Ors.* (2015) 9 SCC 166, a divergent view was taken, the matter has since been referred a larger bench.

7. In the given facts and circumstances, *Sarla Verma* (supra) would prevail.

8. Thus, the appeal is devoid of substance and is dismissed in *limine*.

R.K. GAUBA
(JUDGE)

JANUARY 21, 2016
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