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

Decided on: 29th August, 2017

+ MAC.APP. 174/2016 and CM 45610/2016 and 16777/2017

THE NEW INDIA ASSURANCE COMPANY
LTD.

.... Appellant

Through: Mr. Vinod Trisal, Advocate

versus

MASTER DHRUV KATHURIA & ORS

..... Respondents

Through: Mr. B.R. Sachdeva and Mr.
Shekhar Aggarwal, Advocates for R-1 to 3

+ MAC.APP. 287/2016 and CM 16776/2017

NEW INDIA ASSURANCE CO LTD

..... Appellant

Through: Mr. Salil Paul, Advocate

versus

MASTER DHRUV KATHURIA & ORS

..... Respondents

Through: Mr. B.R. Sachdeva and Mr.
Shekhar Aggarwal, Advocates for R-1 to 3

+ MAC.APP. 6/2017

MASTER DHRUV KATHURIA & ORS

..... Appellants

Through: Mr. B.R. Sachdeva and Mr.
Shekhar Aggarwal, Advocates for A-1 to 3

versus

THE NEW INDIA ASSURANCE CO LTD
& ORS

..... Respondents

Through: None

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

JUDGMENT (ORAL)

1. On 12.06.2012, Amit Kathuria, a serving officer of Indian Air Force, with his wife Durga Kathuria and toddler son Ram Kathuria (8 months old) were travelling in Honda City Car bearing registration no.HR-51T-9068 from Pune to Hyderabad in the area of village in Basavakalyan, Sastapur, Karnataka when their vehicle was hit by a lorry trailer bearing registration no.NL-01-G-6545 (the offending vehicle), admittedly insured against third party risk with New India Assurance Company Ltd. (appellant in MACA 174/2016 and 287/2016). All the three said persons died as a result of the injuries suffered. They are survived by Dhruv Kathuria son of the couple and Gulshan Lal Kathuria and Champa Kathuria, parents of Amit Kathuria (collectively the claimants), the latter two being the parent-in-law of the deceased Durga Kathuria.

2. Three accident claim cases were instituted, one (case no.692/2012) on account of the death of the child Ram Kathuria, the second (suit no.693/2012) on account of the death of Amit Kathuria and the third (suit no.694/2012) on account of the death of Durga Kathuria. In each, the three said claimants were the petitioners. The cases instituted on 27.09.2012 were clubbed for inquiry in which proceedings, besides the insurer, the driver and owner of the offending vehicle were also shown in the array.

3. After inquiry, by common judgment dated 21.12.2015, the Motor Accident Claims Tribunal (Tribunal), upheld the claim for compensation on the principle of fault-liability holding that the accident had occurred due to the negligent driving of the offending vehicle. The said finding has attained finality as it was not challenged by any of the respondents.

4. In the case of death of the child Ram Kathuria, award in the sum of Rs.3,75,000/- was granted directed to be paid by the insurer but was not challenged by any appeal. In the case of claim for death of Amit Kathuria, compensation in the total sum of Rs.1,65,92,616/- was awarded while in the case of death of Durga Kathuria, compensation in the total sum of Rs.20,28,528/- was awarded. The insurer has been directed in each case to pay the said compensation with interest at the rate of 9% p.a.

5. The award in the claim case on account of death of Durga Kathuria is challenged by the insurer by MACA 174/2016 while the claimants by their appeal MACA 6/2017 seek enhancement of the compensation. The award in the case of death of Amit Kathuria is challenged by the insurer by MACA 287/2016.

6. One of the contentions which are common to both the claim cases is that the father and mother of Amit Kathuria could not conceivably have been his dependents, or that of his wife Durga Kathuria in as much as the father (Gulshan Lal Kathuria) himself is a Government pensioner. This plea must be noted and rejected. The evidence would show that it was a close knit family dependent on each other. The father may be a government pensioner but in the evening

of his life, it cannot be said that he would not look up to his son and daughter-in-law who were doing well in life, for their support and sustenance. The mutual dependency of the family is writ large on the record of the case. Therefore, the view taken by the tribunal in accepting the parents as dependents does not call for any disturbance. It is noted that similar view was taken by learned single judges of Karnataka and Rajasthan High Courts in *Puspavathi and Ors. Vs. Sreedar and Ors.*, MFA 22920/2012 decided on 21.03.2013, and *The New India Assurance Company Ltd. Vs. Smt. Leela and Ors.*, SB Civil Misc. Appeal No.227/2017, decided on 06.02.2017. It may also be noted that a learned single judge of this court in *Reliance General Insurance Company Ltd. Vs. Saraswati Negi and Ors.*, MACA 302/2011, by judgment dated 12.09.2012, also held that the daughter-in-law also renders gratuitous services to the parents-in-law and therefore, in case of her death in a motor vehicular accident, the value of such gratuitous services deserves to be taken into account.

7. In the case of claim on account of death of Amit Kathuria, it has been pointed out that in the income tax return for the assessment year 2012-2013, which would correspond to the financial year 2011-2012, that preceded the date of death, the total income of Rs.12,23,245/- declared included Rs.16,366/- on account of income from interest (reflected under the head of income from other sources). Such income would be accruing from the savings in the fixed deposit accounts. Since the corpus would have remained intact, the income from interest could not have been included for calculating the loss of dependency.

Thus, the amount of Rs.16,366/- will have to be deducted from the calculations.

8. The insurance company, however, also takes exception to allowances in the nature of transport allowance and flying allowances which were part of the emoluments earned by the deceased Amit Kathuria from his services with Indian Air Force. It also takes exception to the element of future prospects to the extent of 50% having been factored in. In this context, it refers to the evidence of PW-4 indicating that the promotional avenues could not be clearly indicated. The argument of the insurance company is that the deceased was already 34 years in age and with the advancing years, he, then holding the rank of Squadron Leader, he would have been eventually grounded due to the reduced agility.

9. Such arguments do not impress this court. The fact remains that the deceased was a member of Indian Air Force and would have, in all likelihood, aspired and worked towards attaining higher positions in the service. Following the ruling of the Supreme Court in *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121, the addition of the element of future prospects to the extent of 50%, therefore, cannot be grudged. The allowances referred to above were part of the emoluments earned. They would result in corresponding savings for the family and therefore, their inclusion in the calculation is not improper.

10. Thus, deducting the amount of Rs.16,366/- from the annual income, the loss of dependency is recomputed as [Rs.10,28,601/- (-)]

Rs.16,366/- x 150/100 x 2/3 x 16] Rs.1,61,95,760/-, rounded off to Rs.1,61,96,000/-.

11. Adding the other components of compensation awarded by the Tribunal, the total compensation in the case of death of Amit Kathuria is computed as [Rs.1,61,96,000/- + Rs.25,000/- + Rs.1,00,000/- + Rs.10,000/-] Rs.1,63,31,000/- (Rupees One Crore, Sixty Three Lakh and Thirty one thousand only).

12. The award is modified accordingly. It shall carry interest as levied by the Tribunal.

13. In the case of Durga Kathuria, though the claim was that she was working for gain as a tutor, no formal proof was adduced. Therefore, the Tribunal was constrained to adopt the minimum wages for a graduate (Rs.9,282/-) as the benchmark.

14. 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 SCC 166.

15. 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.

16. The contention of the insurance company against inclusion of the element of future prospects in the case of Durga Kathuria is correct. The income having been assumed on the basis of minimum wages, such element cannot be grudged. Thus, adopting the multiplier of 17, correctly applied by the Tribunal, and after deducting one-third towards personal and living expenses, the loss of dependency in the case of Durga Kathuria is calculated as [Rs.9,282/- x 2/3 x 12 x 17] Rs.12,62,352/-, rounded off to Rs.12,63,000/-.

17. Adding the other components of the non-pecuniary damages awarded by the Tribunal, the total compensation comes to [Rs.12,63,000/- + Rs.1,35,000/-] Rs.13,98,000/- (Rupees Thirteen Lakh & Ninety Eight thousand only). The award is modified accordingly.

18. Needless to add, the award in each case shall carry interest as levied by the Tribunal. The apportionment against the three claimants as granted by the tribunal is not disturbed.

19. By orders dated 24.02.2016 and 08.04.2016 on MACA nos.174/2016 and 287/2016 respectively, the appellant was directed to

deposit the entire awarded amount with upto date interest with the tribunal and out of the said deposit, 50% was directed to be released. The balance shall be released in terms of the modified awards refunding the excess in deposit to the insurance company.

20. The statutory amounts, if deposited, shall be refunded.

21. The appeals and the pending applications are disposed of in above terms.

AUGUST 29, 2017

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R.K.GAUBA, J.