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

Decided on: 25th July, 2017

+ **MAC.APP. 70/2015 & CM APPL. 13655/2015**

NATIONAL INSURANCE CO. LTD. Appellant
Through: **Mr. Manoj R. Sinha, Adv.**

versus

ANIL KUMAR @ TINKU & ORS Respondents
Through: **Mr. Rajnish K. Jha, Adv. for**
claimant/R-1.

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

JUDGMENT (ORAL)

1. The first respondent, then aged 19 years, claiming to be earning his livelihood as a wrestling coach, suffered injuries in a motor vehicular accident that occurred on 10.02.2011, statedly due to negligent driving of Indica car bearing registration no. UP 16X 4699 which was admittedly insured against third party risk with the appellant insurance company (insurer). The injuries included fracture in the right femur shaft and left tibial bones also affecting the left knee joint. The tribunal, on the basis of inquiry into the claim petition (case no. 441/14/11), taken out, in the wake of detailed accident report (DAR) submitted by the police, and considering the evidence including MLC (Ex.PW-1/H) and disability certificate (Ex.PW-2/A),

concluded that his functional disability is to the extent of 35% and awarded compensation taking into account the loss of future income and other heads of compensation (pecuniary and non-pecuniary), awarding eventually total compensation in the sum of Rs. 17,40,863/- with interest @ 9% per annum. The loss of future income which is the main component was in the sum of Rs. 14,74,200/-. The tribunal assessed the income of the claimant at Rs. 7,000/- per month and added the element of future prospects of increase to the extent of 50%.

2. The insurance company which admits the liability to indemnify the insurer and pay to the claimant, points out two errors. The first concerns the loss of future income which has been calculated on basis of disability to the extent of 65%, this against the conclusion reached earlier in the judgment assessing the functional disability to the extent of 35%. The second contention raises concerns the addition of element of future prospects.

3. 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.

4. 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. Lalita 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.

5. The learned counsel for the claimant did not have any answer to the contentions of the insurance company. Indeed, the element of future prospects cannot be added since there is no proof of regular employment or income, leave alone proof of progressive rise in income. The error in calculation on the basis of functional disability is clear, in view of observations in para 29 and 30. Suitable correction, therefore, must be made.

6. Thus, the loss of future income is re-calculated as $(7000 \times 35 \div 100 \times 12 \times 18)$ Rs. 5,29,200/-. This would mean the award has to be reduced by Rs. 9,45,000/-. The award is, thus, reduced to $(17,40,863 - 9,45,000)$ Rs. 7,95,863/-. rounded off to Rs. 7,96,000/-. Needless to add, it shall carry interest as levied by the tribunal. The award is modified accordingly.

7. By order dated 20.01.2015, the insurance company had been directed to deposit 40% of the awarded amount which was allowed to

be released to the claimant. The insurance company shall now pay the balance in terms of the modified award by requisite deposit with the tribunal within 30 days.

8. For any premature release of the amount put in fixed deposits, the claimant is at liberty to approach the tribunal with appropriate application.

9. The appeal and applications are disposed of.

10. The statutory amount shall be refunded.

11. *Dasti* to both parties.

JULY 25, 2017

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R.K.GAUBA, J.