$~6 & 7 *(common order)*

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

Decided on: 24th July, 2017

\+ MAC.APP. 30/2015 and CM APPL.462/2015

BHARTI AXA GENERAL INSURANCE COMPANY LTD ..... Appellant

Through: Mr. Navneet Kumar, Advocate with Mr. Vikas Bhadana, Advocate

Versus

BANO BEGUM & ORS ..... Respondents

Through: Mr. Sanjeev Mehta, Advocate

\+ MAC.APP. 96/2015

BANO BEGUM & ORS ..... Appellants

Through: Mr. Sanjeev Mehta, Advocate

versus

NARENDER SINGH & ORS (BHARTI AXA GENERAL INSURANCE CO.) ..... Respondent

Through: Mr. Navneet Kumar, Advocate with Mr. Vikas Bhadana, Advocate for R-3.

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

JUDGMENT (ORAL)

1. Habib Khan, aged 38 years, earning his livelihood as a mason, suffered injuries in a motor vehicular accident on 19.02.2010 and died in the consequence. The motor vehicular accident which was the cause

for the said death had statedly occurred due to negligent driving of motor vehicle described as container No.HR-55G-3689, it being driven by Narender Singh and having been registered in the name of Om Logistics Limited, each of whom are respondents in these appeals. The motor vehicle was admittedly insured against third party risk with Bharti AXA General Insurance Company Limited, which is the appellant in MAC APP.30/2015, it being one of the respondents in another appeal taken out by Bano Begum, widow and other members of the family of the deceased claiming to be his dependents (hereinafter referred to as "the claimants").

2. On the claim petition of the claimants (MAC Petition No.1327/2010), compensation in the sum of Rs.13,04,200/- was awarded with interest @ 9% per annum, the liability having been fastened on the insurance company, such award being inclusive of Rs.10,69,200/- calculated as loss of dependency, besides Rs.1 lac each towards loss of love and affection and loss of consortium and Rs.10,000/- towards loss to estate, in addition to Rs.25,000/- towards funeral expenses. The insurance company had taken the plea that though the driver held a validly issued driving licence, it could not be acted upon since it had been issued on the basis of a document which was fake. The evidence to this effect was led but then the Tribunal rejected the said defence not only for the reason the driving licence for the period in question was genuine but also accepting the evidence of the owner of the vehicle showing due diligence.

3. The insurer filed MAC APP.30/2015 submitting that in calculating the loss of dependency, the addition of 50% towards future prospects was wrongly factored in, the second contention being on the basis of fake document which had been used for secure the otherwise genuine driving licence, the plea being for recovery rights.

4. The claimants, on the other hand, have come up with MAC APP.96/2015 to seek enhancement of the compensation. The submission of the claimants is that the minimum wages of a semi-skilled worker should have been accepted, in as much as the evidence led, particularly the testimony of Mohd. Arif (PW-1), affirmed that the deceased had a lot of experience in masonry work.

5. On perusal of the record to the Tribunal, the submission of the claimants about the deceased being in the category of a semi-skilled worker merits acceptance. PW-1 had proved that the deceased was experienced in masonry work. In these circumstances, the minimum wages of Rs.5850/- per month should have been treated as the bench-mark.

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 SCC 166.

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. Since the deceased was not in regular employment, there being no formal proof of any progressive rise in income, the element of future prospects cannot be added. The Tribunal applied the multiplier of 15, and rightly so, and made deduction to the extent of one-fourth, and again rightly so, towards personal and living expenses. Therefore, the loss of dependency is re-computed as (5850/- x 3/4 x 12 x 15) Rs.7,89,750/- rounded off to Rs.7,90,000/-.

9. It is noted that the awards under the non-pecuniary heads of damages are inadequate. Following the view taken in MAC.APP.No.160/2015 *Shriram General Insurance Co Ltd v. Usha* decided by this court on 05.05.2016 and having regard to date of accident (19.02.2010), the awards under the heads of non-pecuniary

damages in the sum of Rs.1,50,000/- each towards loss of love & affection and towards loss of consortium and Rs.50,000/- each towards loss of estate and funeral expense are added. Hence, the total compensation payable in the case comes to (Rs.7,90,000/- + Rs.1,50,000/- + Rs.1,50,000/- + Rs.50,000/- + Rs.50,000/-) Rs.11,90,000/-. Needless to add, it shall carry interest as levied by the tribunal.

10. The award is modified accordingly.

11. By order dated 14.01.2015, on MAC APP.30/2015, the insurance company had been directed to deposit the entire awarded amount with interest, out of which 60% was allowed to be released and the balance kept in fixed deposit account. Since the awarded amount has been reduced, it is directed that the amount already released in favour of the claimants other than first claimant (widow) shall be treated as their respective shares. The entire balance amount now payable shall go to the first claimant (widow) only.

12. The contention of the insurance company based on fake document used by the driver to secure an otherwise validly issued driving licence has been properly considered and rejected for sound reasons by the tribunal. The view taken in the impugned judgment is in accord with the view expressed by this court in a number of judgments including, *M/s. The New India Assurance Company Limited vs. Sh. Zakir Hussain & Anr.,* CM(M) 1104/2013, decided on 12.07.2017, *New India Assurance Company Limited vs. Sahira & Ors.,* MAC APP.269/2017, decided on 13.07.2017, and *The Oriental*

Insurance Company Limited vs. Anjleena Khurga & Ors., MAC APP.597/2017, decided on 17.07.2017. The plea for recovery rights is, thus, rejected.

13. The tribunal shall compute the amount payable to the first claimant in terms of the above directions and release the balance to her forthwith, refunding the excess deposited by the insurance company.

14. The appeals are disposed of in above terms.

15. The pending application also stands disposed of.

16. The statutory amount shall be refunded to the insurance company.

17. *Dasti* to the parties.

R.K.GAUBA, J.

JULY 24, 2017
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