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

Decided on: 5th July, 2017

+ **MAC.APP. 116/2012**

NEW INDIA ASSURANCE CO LTD Appellant
Through: **Mr.J.P.N. Shahi, Adv.**

versus

SMT SAVITA & ORS Respondents
Through: **Mr. Manoj Sharma, Adv. for R-1.**
Mr. S.N. Parashar, Adv. for R-2 & 3.

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

JUDGMENT (ORAL)

1. Mahesh Sharma, a non-matriculate, aged about 30 years, died in motor vehicular accident that occurred on 28.08.2010 involving rash driving of motor vehicle described as rural transport vehicle No. DL IVA 3045 (RTV), it being covered by insurance policy against third party risk with the appellant insurance company for the relevant period. On the claim petition (case no. 619/2010), instituted on 23.12.2010, in the wake of detailed accident report (DAR), on behalf of the first and third respondents (the claimants), the tribunal held inquiry and, by judgment dated 4.11.2011, awarded compensation in the sum of Rs. 13,33,400/- with interest @ 7.5% per annum from the date of filing of the petition *i.e.* 23.12.2010, fastening the liability on

the insurer. The insurer is questioning the calculation of loss of dependency to the tune of Rs. 11,93,400/- on the ground the element of future prospects was wrongly added. While fairly conceding this ground to be correct, the learned counsel for the claimants, however, submitted that the non-pecuniary damages on account of loss of consortium (Rs.10,000/-) and loss of estate (Rs.5,000/-) were inadequate and that the rate of interest levied is on the lower side.

2. 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.

3. 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.

4. It is fairly admitted that there is no formal proof of gainful employment or income of the deceased. The learned counsel for the claimants, thus, agrees, that the tribunal was right in calculating the loss of dependency on the assumed income of Rs. 5,850/- per month, it being the minimum wages for non-matriculates for the relevant point of time, the calculation involving multiplier of 17. Since the element of future prospects has to be kept out, after deduction of 1/3rd towards personal and living expenses, the total loss of dependency is worked out at $(5,850 \times 2 \div 3 \times 12 \times 17)$ Rs.7,95,600/-.

5. Following the consistent view taken by this court, non-pecuniary damages in the sum of Rs. 1 lakh each on account of loss of love & affection and loss of consortium and Rs. 25,000/- each towards loss of estate and funeral expenses are added. Thus, the total compensation awardable in the case comes to $(7,95,600- + 1,00,000 + 1,00,000 + 25,000 + 25,000)$ Rs.10,45,600/-, rounded off to Rs. 10,46,000/-. The compensation is, thus, reduced to Rs. 10,46,000/-.

6. Following the consistent view taken by this Court, the rate of interest is increased to 9% per annum from the date of filing of the petition till realization. [see judgment dated 22.02.2016 in MAC.APP. 165/2011 *Oriental Insurance Co Ltd v. Sangeeta Devi & Ors.*]

7. The awarded amount shall be apportioned in the ratio directed by the tribunal. The directions for protection of the corpus as given by the tribunal shall hold good.

8. In terms of the order dated 31.01.2012, the insurance company was directed to deposit the entire awarded amount with upto date interest with the Registrar General of this Court and upon such deposit being made to put it in a fixed deposit receipt in UCO Bank, Delhi High Court Branch, initially for a period of six months with provision for auto renewal from time to time. By order dated 30.07.2012, 60% of such amount was allowed to be released. The Registrar General shall have the liability of the insurance worked out afresh in terms of the modified award releasing the balance to the claimants and refunding the excess deposited to the insurance company.

9. Statutory deposit shall be refunded.

JULY 05, 2017

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R.K.GAUBA, J.