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

Decided on: 26th September, 2017

\+ MAC APPEAL No. 83/2016 & CM No. 3061/2016 (stay)

ORIENTAL INSURANCE CO. LTD. ..... Appellant
Through: Mr. Pradeep Gaur, Adv.

versus

RAJESH SAH & ORS. ..... Respondents
Through: Mr. S.N. Parashar, Adv.

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

JUDGMENT (ORAL)

1. The first respondent had suffered injuries in a motor vehicular accident that occurred on 01.12.2014 due to negligence of bus bearing registration no. DL 1PC 2966, it admittedly being insured against third party risk for the period in question with appellant insurance company (insurer). On his accident claim case (suit no. 33/2015), the tribunal held inquiry, and by judgment dated 23.10.2015 awarded compensation of Rs. 28,07,000/- directing the insurer to pay with interest @ 9% per annum, the said amount having been calculated thus:-

S.No.	Heads	Compensation
1.	Medicines & Medical treatment	Rs.1,75,000/-

2.	Pain & suffering	Rs. 1,80,000/-
3.	Loss of amenities of Life	Rs. 80,000/-
4.	Compensation towards disability	Rs. 50,000/-
5.	Conveyance	Rs. 10,000/-
6.	Special diet	Rs. 5,000/-
7.	Attendant charges	Rs. 18,000/-
8.	Loss of income	Rs.22,89,000/-
	Total	Rs.28,07,000/-

2. The insurer by the appeal at hand takes exception to the inclusion of loss of income due to disability with the element of future prospects having been added.

3. It is noted that in absence of any cogent proof of income, the tribunal went by minimum wages of an unskilled worker at Rs. 7,400/- per month, it being converted into an annual income of Rs. 88,800/-. It is also noted that the claimant was 27 years old at the relevant point of time and on account of injuries sustained in the accident he has been rendered visually impaired to the extent of 100%, his functional disability having been accordingly assessed by the tribunal on the basis of disability certificate (Ex.PW-1/6).

4. 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.

5. 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 12.01.2015, 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.

6. Since there was no proof of regular income muchless of progressive rise therein, the element of future prospects is kept out and loss of earnings due to disability in future is recomputed as (88,800 x 17) Rs 15,09,600/-, rounded off to Rs. 15,10,000/-.

7. It was, however, pointed out by the counsel for the claimant that the compensation under the non-pecuniary heads of damages of pain & suffering and loss of amenities of life granted by the tribunal are inadequate. It is also noted that there is no provision made for future medical expenditure which would be necessary to be awarded in the present case.

8. Following the dispensation in similarly placed case of *Shahzama vs. Rakesh Kumar & Anr.*(MAC Appeal No. 517/2010) decided on 20th September, 2017, the awards of Rs. 2,00,000/- each on account of loss of amenities of life, on one hand, and pain & suffering, on the other, besides Rs. 50,000/- towards future medical expenditure are granted. Adding the other components of compensation awarded by the tribunal, the total compensation in the present case comes to (1,75,000 + 2,00,000 + 2,00,000 + 50,000 + 10,000 + 5,000 + 18,000 + 50,000 + 15,10,000) Rs. 22,18,000/- (Twenty Two Lakhs Eighteen Thousand Only). The award is modified accordingly. It shall carry interest @ 9% (nine percent) as levied by the tribunal.

9. By order dated 29.01.2016, the insurance company had been directed to deposit the entire awarded amount with interest and out of the same 70% (seventy percent) was allowed to be released to the claimants. The tribunal shall now calculate the amount payable in terms of the modified award and release the balance accordingly to the claimant and refunding the excess to the insurance company.

10. The statutory amount shall be refunded to the appellant.

11. The appeal is disposed of in above terms.

R.K.GAUBA, J.

SEPTEMBER 26, 2017
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