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

Decided on: 11th October, 2017

+ **MAC APPEAL 202/2011 and CM No.4720/2011**

NEW INDIA ASSURANCE CO. LTD. Appellant

Through: **Mr. J.P.N. Shahi and Ms.
Komal Dhingra, Advocate**

versus

OMBIR & ORS.

..... Respondents

Through: **None**

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The claim case (MACT 365/2006) instituted on 14.07.2006 by the first and second respondents (collectively, the claimants) claimed compensation under Section 166 of the Motor Vehicles Act, 1988 on account of death of their bachelor son, Amit Kumar, then aged 27 years, in a motor vehicular accident that had occurred on 03.06.2006 due to the negligent driving of a truck bearing registration no.UP-13L-5342 admittedly insured against third party risk with the appellant / insurance company (insurer) for the period in question.

2. The Motor Accident Claims Tribunal (Tribunal) after holding inquiry, by judgment dated 31.07.2010, awarded compensation in the total sum of Rs.17,85,000/- and directed the insurer (appellant) to pay the same, the said amount inclusive of Rs.17,55,000/- towards loss of

dependency and Rs.10,000/- each under the heads of loss to estate, loss of love and affection and funeral charges respectively.

3. The insurer by the appeal at hand questions the calculation of loss of dependency on the ground that the proof of income was not clear and there was no evidence showing progressive rise in income and therefore, the element of future prospects of increase in income to the extent of 50% should not have been factored in.

4. The claimants having been served with the notice, the appeal was admitted and put in the category of regulars as per order dated 06.09.2012. When it is taken up for hearing, there is no appearance on their behalf. The appeal has been considered on the basis of submissions made by the counsel for the appellant and by perusal of the record.

5. It appears the claimants had submitted before the tribunal that the deceased was working as a contractor supplying labour to M/s. Dev Motors Pvt. Ltd., his earnings claimed to be in the region of Rs.50,000/- p.m. However, no clear proof of any such earnings was adduced, it having been conceded that the deceased would not file the income tax returns nor maintain any other records. The only reliance placed was on form no.16A that had been issued by the company with which the deceased had business connections, it showing that during the assessment year 2005-2006, the said company had paid to him (the deceased) total amount of Rs.15,44,600/- which obviously would include the labour charges. It is on that basis that the tribunal concluded the income of the deceased to be in the region of Rs.15,000/- p.m. But, for calculating the loss of dependency, it

proceeded to add the element of future prospects of increase in income to the extent of 50%. It is this part of the calculation which is challenged.

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. Lalita 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.

8. The submissions of the insurance company must be accepted as there was no clear proof of regular income or progressive rise therein.

The element of future prospects has to be kept out. The tribunal had made deduction of 50% towards personal and living expenses and going by the age of the claimant, applied the multiplier of 13. The loss of dependency is re-calculated as [Rs.15,000/2 x 12 x 13] Rs.11,70,000/-.

9. It is, however, also noted that the non-pecuniary damages awarded by the tribunal as indeed the rate of interest (8% p.a.) are deficient.

10. Following the rulings in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshamma* (2015) 9 SCC 150, an amount of Rs.1,00,000/- is added towards loss of love and affection and Rs.25,000/- each towards loss of estate and funeral expenses. Thus, the total compensation in the case comes to [Rs.11,70,000/- + Rs.1,00,000/- + Rs.25,000/- + Rs.25,000/-] Rs.13,20,000/- [Rupees Thirteen Lakh and twenty thousand only].

11. The award is modified accordingly.

12. Following the consistent view taken by this Court, the rate of interest is increased to 9% per annum (nine percent) 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.*]

13. The tribunal had apportioned the award equally amongst the two claimants. The said dispensation shall continue to govern the modified award.

14. The insurance company is directed to satisfy the modified award by requisite deposit with the tribunal within 30 days and the same shall be released to the claimants.

15. The statutory amount deposited shall be refunded to the insurance company after proof is shown of the award having been satisfied.

16. The appeal and the pending application are disposed of in above terms.

OCTOBER 11, 2017

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R.K.GAUBA, J.



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