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

Decided on: 5th July, 2017

+ **MAC.APP. 535/2017 and CM 23169/2017**

SAYNA & ORS

..... Appellants

Through: Mr. S.N. Parashar, Advocate

versus

DINESH KUMAR & ORS

..... Respondents

Through: Mr. Pankaj proxy counsel for Ms.
Shantha Devi Raman, Advocate for R-3

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The appellants had claimed compensation in the wake of detailed accident report (DAR) registered (D-93/16) in the Motor Accident Claims Tribunal (Tribunal) on 30.11.2015 on account of death of Rafique in a motor vehicular accident that occurred on 11.10.2015 in the area of police station Delhi Cantt, it statedly involving negligent driving of motor vehicle no.DL-3CAG-5269 by the first respondent. It appears that the vehicle was owned by the second respondent and insured against third party risk at the relevant period with the third respondent.

2. The tribunal, after issuance of notice, held inquiry and on that basis rendered judgment dated 27.10.2016 awarding compensation in the total sum of Rs.20,34,243/- with interest at the rate of 9% p.a. to be paid with effect from 30.11.2015, date of filing of the DAR till

realization, the liability having been fastened against the insurer.

3. The appellants have come up before this court by the appeal at hand raising only one grievance, it being that in calculation of loss of dependency, the element of future prospects was not factored in.

4. It is noted that in the evidence led before the tribunal, it was brought out that the deceased was 34 years old person, self-employed having own business of garments. But this was not substantiated by any concrete evidence. The tribunal noted that the deceased had studied upto 8th standard and in absence of any formal proof assumed his income on the basis of minimum wages of non-matriculantes at Rs.10140/- p.m. It did not add the element of future prospects.

5. 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.

6. 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.

7. There is no clear evidence showing element of future prospects of increase in income in the case at hand.

8. In above view, the appeal is found devoid of substance and is dismissed. The pending application also stands dismissed.

JULY 05, 2017

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R.K.GAUBA, J.