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

Decided on: 03rd August, 2017

\+ MAC.APP. 104/2016 and CM APPL.3589/2016 (delay), CM APPL.3588/2016 (stay)

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

Through: Mr. Navneet Kumar, Adv.

Versus

MAMTA DEVI & ORS. ..... Respondents

Through: Ms. Nitik Gupta, Adv. for R-1 & R-2.

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

JUDGMENT (ORAL)

1. By judgment dated 14.10.2015 on the claim petition (Suit No.318/2014) of the first to third respondents herein, the Motor Accident Claims Tribunal (the tribunal) held inquiry and awarded compensation in the sum of Rs.20,97,664/- with interest on account of death of Rahul Kumar, in a motor vehicular accident that occurred on 24.09.2014 due to negligent diving of the motor vehicle described as container bearing registration No.HR-47A-5662, it admittedly insured against third party risk for the period in question with the appellant insurance company.

2. The insurer is in appeal pressing it on the short point that the element of future prospects of increase in the income was wrongly

factored in while calculating the loss of dependency on the multiplier of 18, the income having been assessed on the basis of minimum wages (Rs.8554/-).

3. 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.

4. 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.

5. The counsel for the respondents submitted that she leaves the matter to the discretion of the court.

6. There was no formal evidence led to show any regular income or progressive rise therein. In these circumstances, the element of future prospects is kept out, the loss of dependency is re-calculated as (8554/- x 2/3 x 12 x 18) Rs.12,31,775.9 rounded off to Rs.12,32,000/-.

7. It is, however, noted that the accident had occurred on 24.09.2014. Following the view taken by this court in MAC.APP.No.160/2015 *Shriram General Insurance Co Ltd v. Usha* decided on 05.05.2016, 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.

8. Hence, the total compensation payable in the case comes to (12,32,000/- + 1,50,000/- + 1,50,000/- + 50,000/- + 50,000/-) Rs.16,32,000/-. The award is modified accordingly. It shall carry interest at levied by the tribunal.

9. The tribunal had specified the apportionment falling to the share of the claimants. In terms of the directions in the order dated 02.02.2016, the insurance company would have deposited the entire awarded amount with upto date interest, out of which sixty percent (60%) was allowed to be released in terms of the impugned award. Since the compensation has been reduced, it is directed that the share already released to the second respondent shall be treated as the

compensation apportioned in her favour, the balance now to go to the first respondent.

10. The tribunal shall release the balance in terms of the modified award, refunding the excess deposited to the insurance company. The Statutory amount shall also be refunded to the insurance company.

11. The appeal along with pending applications stands disposed of in above terms.

12. *Dasti.*

R.K.GAUBA, J.

AUGUST 03, 2017
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