

\$~8

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

Decided on: 19th September, 2017

+ **MAC APPEAL No. 96/2016**

THE NEW INDIA ASSURANCE CO. Appellant
Through: **Ms. Archana Gaur, Adv.**

versus

AMIT KUMAR & ORS. Respondents
Through: **None.**

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

JUDGMENT (ORAL)

1. On 06.11.2013 at about 5:00PM a motor vehicular accident took place involving two vehicles, one being motorcycle bearing registration No. DL 9SS AA 2597 and the other car make Bolero bearing registration no. HR 63A 3657. Prabhawati, aged 44 years who was riding on the pillion of the motorcycle suffered injuries and died in the consequence. Accident claim case (MACP 19/14/13) instituted by first to third respondents (collectively, the claimants) on 20.12.2013, sought compensation on the averments that the accident had occurred due to negligent driving of Bolero car, it being a vehicle insured against third party risk for the period in question with the appellant insurance company (insurer). The tribunal held inquiry and, by judgment dated 28.10.2015, accepted the case for compensation holding the Bolero car driver Rasid (fourth respondent) negligent. It

determined compensation in the total sum of Rs. 16,66,674/-, it inclusive of Rs. 12,41,674/- due to loss of dependency and directed the insurance company to pay the same with interest @ 10% per annum.

2. The insurer presses the appeal questioning the determination of compensation on account of loss of dependency by inclusion of element of future prospects pointing out that in absence of any proof of income or employment of the deceased was notionally assessed with the help of minimum wages for non-matriculantes (Rs. 8528/-). The insurer also questions the levy of interest @ 10 % per annum.

3. Insipite of due notice and having appeared on some dates through counsel, at the hearing, the claimants have not appeared to assist.

4. Having heard the learned counsel for the appellant and having perused the record, the submissions on the two counts mentioned above are found to be meriting acceptance.

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 12.01.2015, 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.

7. Since there was no proper proof of regular employment, the element of future prospects has to be kept out. Therefore, the loss of dependency is recalculated as $(8528 \times 2 \div 3 \times 12 \times 14)$ Rs. 9,55,136/-. This would mean the compensation has to be reduced by $(12,41,674 - 9,55,136)$ Rs. 2,86,538/-. Thus, the total compensation is reduced to $(16,66,674 - 2,86,538/-)$ Rs. 13,80,136/, rounded off to Rs. 13,81,000/-. (Rupees Thirteen Lakhs Eighty One Thousand Only).

8. There is no special reason as to why the rate of interest should be levied at 10% per annum which is higher than ordinary. Following the consistent view taken by this Court [see judgment dated 22.02.2016 in MAC.APP. 165/2011 *Oriental Insurance Co Ltd v. Sangeeta Devi & Ors.*], the rate of interest is reduced to 9% (nine percent) per annum from the date of filing of the petition till realization.

9. By order dated 01.02.2016, the insurance company had been directed to deposit the entire awarded amount with upto date interest

with the tribunal within thirty days and from out of such deposit eighty per cent (80%) was allowed to be released to the claimants. It is noted that tribunal had specified the shares of each of the claimants, they being equal. The tribunal shall now release the balance in similar proportion to the three claimants from out of the remainder in deposit in accordance with the modified award, refunding the excess to the insurance company.

10. The appeal is disposed of in above terms.

11. The statutory amount shall be refunded to the appellant insurance company.

SEPTEMBER 19, 2017

nk

R.K.GAUBA, J.