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

Decided on: 18th September, 2017

+ MAC.APP. 87/2016 and CM APPL.3169/2016, 3171/2016

UNITED INDIA INSURANCE CO LTD Appellant
Through: Mr. Pankaj Seth, Advocate

Versus

RAJENDERI DEVI & ORS. Respondents
Through: Mr. S.N. Parashar, Advocate

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Yatish Kumar (born on 04.05.1984), concededly self-employed, suffered injuries in a motor vehicular accident that occurred on 03.06.2014 due to negligent driving of bus bearing registration No.UP-14-T-9050, admittedly insured against third party risk with the appellant insurance company (insurer) for the period in question and died in the consequence. The first to fourth respondents, being members of the family dependent on him (collectively, the claimants), instituted accident claim case (Suit No.515/2014) on 07.08.2015 seeking compensation. The tribunal, after inquiry, by the judgment dated 27.08.2015, awarded compensation in the total sum of Rs.26,83,000/-, calculating it thus:-

Sl.No.	Head	Amount in (Rs.)
1.	Loss of dependency	24,48,000/-
2.	Love and affection	1,00,000/-
3.	Loss of consortium	1,00,000/-
4.	Loss of estate	10,000/-
5.	Funeral Expenses	25,000/-
	Total	26,83,000/-

2. The liability to the extent of above mentioned amount with interest @ nine per cent (9%) per annum was fastened on the insurer, which has come up in the appeal questioning the calculation of loss of dependency on the ground the income was over assessed and the element of future prospects of income was wrongly added. While defending the said calculations by the tribunal, the claimants submit grievance that the non-pecuniary damages awarded were inadequate.

3. Having heard the arguments of the learned counsel for the respective parties, the submissions of both sides are found to be meriting acceptance.

4. Though in the evidence it was claimed that the deceased was working as AC Mechanic, the documents showing his educational qualification are found to relate to a diploma course in Agricultural Engineering held by M.G. Polytechnic, Hathras, U.P. Apparently, the said educational qualification has no connection whatsoever with the job as AC mechanic. Even otherwise, no formal proof of engagement

as AC Mechanic was furnished. Given the nature of job (self-employment) described by the claimants themselves, the oral claim, not substantiated by any evidence, about the income being in the range of Rs.12,000/- could and should not have been accepted. The minimum wages for a skilled worker (Rs.10,374/-) applicable at the relevant point of time are, thus, adopted as the bench mark.

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. 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.

7. Since the deceased was admittedly self-employed, there being no proof of any regular income, much less progressive rise therein, the element of future prospects of increase is kept out.

8. The tribunal correctly chose the multiplier of 17 since the deceased had just completed age of 30 years. It, however, committed error by deducting personal and living expenses to the extent of one-third, ignoring the fact that it was a case where four claimants had come up to seek compensation, they including father, whose presence seems to have been ignored in the calculation. The tribunal did not bear in mind that the first claimant (the mother) while appearing as a witness did testify that all the four persons were dependents. She even clarified during cross-examination that her husband (father of the deceased) would remain unwell. Since such evidence was not impeached, the claim on account of the father could not have been defeated. In this view, one-fourth is to be deducted towards personal and living expenses.

9. Thus calculated, the loss of dependency works out to $(10,374/- \times \frac{3}{4} \times 12 \times 17)$ Rs.15,87,222/- rounded off to Rs.15,88,000/- (Rupees Fifteen Lakhs Eighty Eight Thousand Only).

10. Following the view taken in MAC.APP.No.160/2015 *Shriram General Insurance Co Ltd v. Usha* decided by this court on 05.05.2016, non-pecuniary heads of 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. Hence, the total compensation payable in the case comes to (Rs.15,88,000/- + 1,50,000/- + 1,50,000/- + 50,000/- + 50,000/-) Rs.19,88,000/- (Rupees Ninteen Lakhs Eighty Eight Thousand Only).

11. The award is modified accordingly. It shall carry interest as levied by the tribunal.

12. By order dated 29.01.2016, the insurance company had been directed to deposit the entire awarded amount with interest with the tribunal, out of which, 60% (sixty percent) was allowed to be released to the claimants. The tribunal shall calculate the balance liable to be paid to the respective claimants and release the same from out of the remainder in deposit, refunding the excess to the insurance company.

13. The statutory amount shall be refunded.

14. This disposes of the appeal and pending applications.

SEPTEMBER 18, 2017

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R.K.GAUBA, J.