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

Decided on: 25th September, 2017

\+ MAC.APP. 93/2016 and CM 3402/2016

ORIENTAL INSURANCE COMPANY LTD ..... Appellant
Through: Mr. Tarkeshwar Nath and Mr. Saurabh Kr. Tuteja, Advocates

versus

SUNITA & ORS ..... Respondents
Through: Mr. Manoj Kumar, Advocate for R-1 to 5

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

JUDGMENT (ORAL)

1. Ram Narayan had died on account of injuries sustained in a motor vehicular accident that occurred on 28.11.2004 due to the negligent driving of a motor vehicle described as three wheeler scooter bearing registration no.DL-1RD-6493 (TSR) concededly insured against third party risk with the appellant insurance company. His wife and four children, they being first to fifth respondents, instituted accident claim case (MACA 182/2012) on 10.05.2012 impleading the parents of the deceased, they being sixth and seventh respondents (collectively referred to as the claimants).

2. The Motor Accident Claims Tribunal (Tribunal) held inquiry and, by judgment dated 28.11.2015, accepted the claim for

compensation on the principle of fault liability. It awarded compensation in the total sum of Rs.10,74,361/- directing the insurer (appellant) to pay the same with interest at the rate of 9% p.a.

3. The insurer filed the appeal at hand questioning the calculation of the compensation by the impugned judgment arguing that the loss of dependency has been wrongly calculated after factoring in the element of future prospects of increase to the extent of 50% even though the income of the deceased was assumed on the basis of minimum wages. It is also the grievance of the insurance company that the award under the non-pecuniary heads of damages, particularly under the head of loss of love and affection at Rs.4,00,000/-, is excessive.

4. Though the insurance company had not taken care to so mention, it is pointed out by the counsel for the claimants at the hearing that the tribunal had later modified the award by order dated 21.01.2016 recalculating the loss of dependency with the multiplier of 16, rather than the multiplier of 14 as originally done, it being taken as an amount of Rs.7,11,245/-, the total compensation awarded hence being Rs.12,46,245/-.

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. It is admitted by the counsel for the claimants that no proof of regular employment of the deceased much less any progressive rise in income has been brought before the tribunal. In these circumstances, the element of future prospects will have to be kept out.

8. The loss of dependency is re-calculated as [Rs.3,087/- x 4/ 5 x 12 x 16] Rs.4,74,163.20, rounded off to Rs.4,75,000/- (Rupees four lakh and seventy five thousand only).

9. In view of the rulings of the Supreme Court in *Rajesh & Ors. v. Rajbir Singh & Ors., (2013) 9 SCC 54 and Shashikala V. Gangalakshmamma (2015) 9 SCC 150*, awards under the non-pecuniary heads of damages given by the tribunal are found to be improper. Consistency has to be maintained in such awards.

Therefore, amounts of Rs.1,00,000/- each towards loss of love and affection and loss of consortium and Rs.25,000/- each towards loss to estate and funeral expenses are added.

10. Thus, total compensation in the case comes to [Rs.4,75,000/- + Rs.1,00,000/- + Rs.1,00,000/- + Rs.25,000/- +Rs.25,000/-] Rs.7,25,000/- (Rupees Seven lakh and twenty five thousand only). The award is modified accordingly. It shall carry interest as levied by the tribunal.

11. By order dated 01.02.2016, the insurance company had been directed to deposit the entire awarded amount with up-to-date interest in terms of the judgment referred to above and from out of such deposit, seventy percent (70%) was allowed to be released to the claimants, the balance kept in interest bearing account. The tribunal shall calculate the balance amount payable to the claimants in terms of the modified award and release the same to the claimants refunding the excess to the insurance company.

12. The statutory amount shall be refunded to the insurance company.

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

R.K.GAUBA, J.

SEPTEMBER 25, 2017
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