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

Decided on: 21st September, 2017

+ **MAC.APP. 165/2016 and CM 6355/2016**

DELHI TRANSPORT CORPORATION & ANR ... Appellants

Through: Mr. Sarfaraz Khan and Mr. Ataur
Rahman, Advocates for R-1

versus

RAMHET VERMA & ANR

..... Respondents

Through: Mr. Pankaj Gupta for Ms. Suman
Bagga, Advocate for United India Insurance
Co. Ltd.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. On 04.06.2011, Rekha Devi, suffered injuries in a motor vehicular accident that occurred in the area of Kanjhawala Road, Sector-22, Rohini, Delhi due to the negligent driving of a bus bearing registration no.DL-1PB-5590 owned by the first appellant and died in the consequence. The bus was insured against third party risk covering the period in question with the second respondent (insurer). The claimants, described collectively as the first respondent, being members of the family dependent on the deceased instituted accident claim case (suit no.160/11) on 12.07.2011.

2. The Motor Accident Claims Tribunal (Tribunal), held inquiry and, by judgment dated 07.09.2015, accepted the case for compensation on the principle of fault liability holding the second appellant, driver of the bus responsible. The tribunal awarded the total compensation in the sum of Rs.17,38,353/- calculating it thus :-

Medical Bills	Rs.18,408/-
Loss of dependency	Rs.15,84,945/-
Loss of love and affection	Rs.1,00,000/-
Funeral expenses	Rs.25,000/-
Loss of consortium to petitioner no.1	Rs.10,000/-
Total	Rs.17,38,353/-

3. Though the insurer was called upon to satisfy the said award of compensation with interest at the rate of 9% p.a., in view of the finding on the issue of breach of terms and conditions of the insurance policy, the insurer was granted recovery rights against the first appellant, the registered owner of the bus.

4. The appeal by the registered owner and driver of the bus is pressed at the hearing only to question the calculation of loss of dependency on the ground that the element of future prospects of increase was wrongly added over and above the income notionally assessed with the help of minimum wages for a matriculate (Rs.7,826/- p.m.).

5. Though the claimants had been duly served and had even appeared, at the hearing, there is no appearance on their behalf. The

learned counsel for the appellant and the insurer have been heard and the record has been perused.

6. 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.

7. 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.

8. The submission of the appellant about the future prospects must be accepted for the reason that the tribunal did not have any cogent evidence before it with regard to the engagement of the deceased in a

gainful employment much less the prospects of progressive rise of earnings from time to time. It is noted that given the age of the deceased, it being 39 years, the tribunal had applied the multiplier of 15 and made a deduction of one-fourth towards personal and living expenses. The loss of dependency is re-computed as [Rs.7,826/- x 3 / 4 x 12 x 15] Rs.10,56,510/-, rounded off to Rs.10,57,000/- (Rupees Ten Lakh and fifty seven thousand only).

9. It is, however, noted that the awards under the non-pecuniary heads of damages granted by the tribunal are inadequate and there is further deficiency on account of there being no award under the head of loss to estate. Following the decision in *Shriram General Insurance Co Ltd v. Usha*, MAC.APP.No.160/2015, decided on 05.05.2016, awards of Rs.1,50,000/- each towards loss of love and affection and loss of consortium and Rs.50,000/- each towards loss to estate and funeral expenses are added.

10. Putting together all the heads including the award of Rs.18,408/- towards medical expenses, the total compensation in the case comes to [Rs.10,57,000/- + Rs.18,408/- + Rs.1,50,000/- + Rs.1,50,000/- + Rs.50,000/- + Rs.50,000/-] Rs.14,75,408/-, rounded off to Rs.14,76,000/- (Rupees Fourteen Lakh and seventy six thousand only). The award is modified accordingly. It shall carry interest as levied by the tribunal. The statutory rights remained undisturbed.

11. The statutory deposit by the appellant shall be made over to the insurer towards part satisfaction of its recovery rights.

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

R.K.GAUBA, J.

SEPTEMBER 21, 2017

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