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

*Decided on: 23<sup>rd</sup> August, 2017*

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MAC.APP. 201/2014 and CM APPL.37385/2016

M/S. THE UNITED INDIA INSURANCE CO. LTD

..... Appellant

Through: Mr. D.D. Singh, Advocate with  
Mr. Navdeep Singh, Advocate

versus

SMT. KAILASH DEVI & ORS.

..... Respondents

Through: Mr. Braj Kishore Roy, Adv.

**CORAM:**

**HON'BLE MR. JUSTICE R.K.GAUBA**

**JUDGMENT (ORAL)**

1. Sandeep Kumar, a bachelor, aged about 21 years, died in a motor vehicular accident that occurred on 24.10.2007 due to negligent driving of motor vehicle described as tempo bearing registration No.HR-38D-2589, which was admittedly insured against third party risk for the period in question with the appellant insurance company (insurer). His parents including the first respondent (mother) filed accident claim case (MACP No.561/07/2008) on 03.12.2007 seeking compensation. Ram Kumar, father of the deceased, died during the pendency of the inquiry before the tribunal and, thus, the claim petition was prosecuted by the first respondent only.

2. The tribunal clubbed the case with another accident claim case and held inquiry and, by common judgment dated 25.11.2013, awarded compensation in the sum of Rs.5,27,436/- in favour of the first respondent (claimant) fastening the liability on the appellant insurance company to pay with interest @ seven and half per cent (7.5%) per annum from the date of filing of the petition till realization.

3. The insurance company, by appeal at hand, questions the calculation of loss of dependency on the ground that the element of future prospects was wrongly added over and above the income which was assumed on the basis of minimum wages.

4. *Per contra*, the claimant argue through counsel that the non-pecuniary damages towards loss to estate at Rs.10,000/- and the rate of interest levied are inadequate.

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 12.1.2015, 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.

7. No clear evidence about the nature of avocation of earnings of the deceased was brought in. The tribunal, therefore, assumed the income on the basis of minimum wages of matriculate (Rs.3964/-). In these circumstances, the element of future prospects should not have been added. The calculation, thus, will have to be made afresh with the multiplier of 11, which was, however, correctly chosen.

8. After deducting fifty per cent (50%) towards personal and living expenses, the loss of dependency is computed as  $(3964/- \times 50/100 \times 12 \times 11)$  Rs.2,61,624/- rounded off to Rs.2,62,000/- (Rupees two lacs sixty two thousand only).

9. Following the view taken in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshamma* (2015) 9 SCC 150, the loss of estate is compensated by addition of award of Rs.25,000/-.

10. Adding the other components under loss of love and affection and funeral expenses, as awarded by the tribunal, the total compensation in the case comes to (2,62,000/- + 1,00,000/- + 25,000/- + 25,000/-) Rs.4,12,000/- (Rupees four lacs twelve thousand only).

11. The award is accordingly modified.

12. 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 increased to 9% per annum from the date of filing of the petition till realization.

13. In terms of order dated 05.03.2014, the insurance company had deposited the entire awarded amount with upto date interest with the Registrar General of this Court, out of which seventy per cent (70%) was allowed to be released and the balance kept in fixed deposit receipt.

14. The Registry shall now calculate the balance payable to the claimant in terms of the modifications ordered above, refunding the excess, if any, to the insurance company with statutory amount.

15. The appeal along with accompanying application stands disposed of in above terms.

16. *Dasti.*

**R.K.GAUBA, J.**

**AUGUST 23, 2017**

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