$~R-189 & 190

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

Decided on: 12th September, 2017

\+ MAC APPEAL NO.163/2010 and CM Nos.4802/2010 & 14562/2010

IFFCO TOKIO GENERAL INS. CO.LTD. ..... Appellant
Through: Ms. Harsh Lata for Ms. Shantha Devi Raman, Advocate

versus

BABU LENKA & ORS. ..... Respondents
Through: Mr. Nitinjya Chaudhary, Adv. for R-1 & 2

\+ MAC APPEAL NO.169/2010 and CM 4957/2010

TATA AIG GENERAL INSURANCE CO. LTD. .... Appellant
Through: Ms. Harsh Lata for Ms. Shantha Devi Raman, Advocate

versus

BABU LENKA & ORS. ..... Respondents
Through: Mr. Nitinjya Chaudhry, Adv. for R-1 & 2

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

JUDGMENT (ORAL)

1. Pradeep Kumar Lenka, a bachelor, then aged about 26 yrs, son of the first and second respondents (collectively, the claimants) suffered injuries in a motor vehicular accident that occurred on

28.05.2006 due to the negligent driving of two vehicles, one being Santro Car bearing registration no.DL-3C-AG-1528 (Santro car) and, the other, Honda City car bearing registration no.DL-9CG-2785 (Honda City car). He remained under treatment in hospital but died due to the injuries suffered on 17.08.2016. The accident claim case (petition no.409/2006) instituted by his parents on 25.09.2006 was clubbed with another accident claim case arising out the same accident and was subjected to inquiry and resulted in judgment dated 04.01.2010 whereby the drivers of both the said cars impleaded as respondents in inquiry, were held liable, equally responsible and accountable for the accident.

2. The Motor Accident Claims Tribunal (Tribunal) awarded compensation for the death of Pradeep Kumar in the total sum of Rs.11,82,905/- (said to be erroneous calculation), directing the insurer of each vehicle to pay the same in equal proportions, calculating it thus :-

On account of medical expenses	Rs.45,000/-
Pain and sufferings	Rs.1,00,000/-
Loss of dependency	Rs.10,26,144/-
Loss of income	Rs.12,093/-
Loss of amenities	Rs.15,000/-
On account of conveyance	Rs.15,000/-
Loss of love and affection	Rs.50,000/-
Loss of estate	Rs.10,000/-
Funeral expenses	Rs.10,000/-

TOTAL	Rs.11,82,905/-

3. The insurer of each car having filed these appeals presses the same assailing the computation of compensation pointing out, amongst others, that the awards under the heads of loss of amenities and pain and suffering were not called for, given the fact that the case was being treated as one of fatal accident, it also being submitted that the loss of dependency calculated by the tribunal was incorrect since it assumed the income, in absence of better proof, with the help of minimum wages for a graduate, there being no proof of such educational qualification of the deceased, the element of future prospects of increase also having been taken into consideration wrongly.

4. The learned counsel for the claimants fairly conceded that the deceased was not a graduate. Given the fact that there is proof on record that he was matriculate, the minimum wages of Rs.3,719/- applicable to the case of a matriculate during the relevant period are taken as the benchmark.

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 clear proof of the employment or of the income of the deceased, no element of future prospects deserves to be added. After deducting one-half towards personal and living expenses and applying the multiplier of 14 correctly chosen by the tribunal, the loss of dependency is re-calculated as [Rs.3,719/2 x12 x 14] Rs.3,12,396/-, rounded off to Rs.3,13,000/- [Rupees Three Lakh and thirteen thousand only].

8. While the awards under the heads of pain and suffering and loss of amenities cannot be endorsed in as much as the victim having died such personal compensation would not survive, it is found that the awards under the non-pecuniary heads of loss of love and affection and loss to estate and funeral expenses are deficient. Following the rulings in *Rajesh & Ors. v. Rajbir Singh & Ors.*, *(2013) 9 SCC 54* and

Shashikala V. Gangalakshmamma (2015) 9 SCC 150, awards of Rs.1,00,000/- towards loss of love and affection and Rs.25,000/- each towards loss of estate and funeral expenses are added.

9. Putting together, the other heads of damages awarded by the tribunal, the total compensation in the case comes to [Rs.45,000/- + Rs.3,13,000/- + Rs.12,093/-+Rs.15,000/- + Rs.1,00,000/- + Rs.25,000/- + Rs.25,000/-] Rs.5,35,093/-, rounded off to Rs.5,36,000/- (Rupees Five Lakh and thirty six thousand only).

10. Following the consistent view taken by this court, the rate of interest is increased to 9% (nine percent) p.a. from the date of filing of the petition till realization. [see judgment dated 22.02.2016 in *MAC.APP. 165/2011, Oriental Insurance Co Ltd v. Sangeeta Devi & Ors*.].

11. By order dated 16.03.2010 on MACA 163/2010, each of the two insurance companies were directed to deposit Rs.3,00,000/- each in UCO Bank, Delhi High Court Branch, New Delhi. By identical orders passed on 26.05.2010, in the two appeals, 50% (fifty percent) of the amount thus deposited was allowed to be released to the claimants, balance kept in fixed deposit. The Registry shall calculate the amounts payable to the claimants in terms of the modification ordered above and release it accordingly refunding the excess in deposit, if any, to the respective insurance companies. Conversely, if there is any deficiency, the insurance companies will be obliged to deposit the balance of their liability with the tribunal within 30 days making it available to be released to the claimants.

12. Statutory deposits shall be refunded after proof is shown of the awards having been satisfied.

13. Both appeals and the pending applications are disposed of in above terms.

R.K.GAUBA, J.

SEPTEMBER 12, 2017

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