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

Decided on: 27th October, 2017

\+ MAC APPEAL No. 1063/2016

IFFCO TOKIO GENENRAL INSURANCE CO. LTD.
..... Appellant
Through: Mr. A.K.Soni, Adv.

versus

ANITA DEVI & ORS. ..... Respondents
Through: Mr. O.P. Mannnie, Adv. for R-1 to 6.

\+ MAC APPEAL No. 205/2017

ANITA DEVI & ORS. ..... Appellant
Through: Mr. O.P. Mannie, Adv.

versus

YUDHVIR SIGH & ORS. ..... Respondents
Through: Mr. A.K. Soni, Adv. for R-3.

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

JUDGMENT (ORAL)

1. Pankaj Kumar Mishra was running across the road on 16.04.2015 at about 1.30 p.m. when he was hit by car bearing registration no. HR 26Y 8712 and died due to the injuries consequently suffered. On the accident claim filed by his wife and

other members of the family dependent on him, they being appellants in MAC Appeal No. 205/2017 instituted accident claim case (MACP No. 86/16) on 05.10.2015.

2. The motor accident claims tribunal held inquiry and by judgment dated 04.10.2016, held that the accident had occurred primarily due to negligent driving of the vehicle in question though accepting the plea of contributory negligence attributing it to the extent of 10% to the deceased. The tribunal awarded compensation in the total sum of Rs. 17,85,600/- and directed IFFCO Tokio General Insurance Company Ltd. (appellant in MAC Appeal No. 1063/2016), it admittedly being the insurer against third party risk in respect of the vehicle for the period in question.

3. The insurer, by its appeal, submits that in the given facts and circumstances as brought out, *inter alia,* in evidence of Govind Kumar (PW-2) deposing on the strength of his affidavit (Ex.PW-2/A), the car driver could not have been held responsible, the entire negligence being on the part of the deceased himself. *Per contra*, the claimants submit that in calculating the loss of dependency, the tribunal should have been added the element of future prospects of increase and, therefore, the compensation should be enhanced.

4. Having heard the learned counsel on both sides, this Court finds no merit in both the appeals.

5. It may be that the deceased was running across the road to go from one side to other. The evidence would show that the deceased was being chased by someone and that there had been a quarrel in which he was involved prior to the accident. Be that as it may, the car

driver was expected to be vigilant and take care of the pedestrians who would cross the road. In the facts and circumstances, the tribunal's view about the contributory negligence to the extent of 10% on the part of the deceased does not call for any interference.

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. No clear evidence about the engagement of the deceased in a regular employment muchless of earnings was adduced for which reason the tribunal went by minimum wages. In these circumstances, the non-inclusion of the element of future prospects cannot be grudged.

9. The appeals are dismissed.

10. By order dated 23.12.2016 (in MAC Appeal No. 1063/2016), the insurance company had been directed to deposit the entire awarded amount with upto date interest with UCO Bank, and out of such deposit 10% was released to some of the claimants. The registry shall now calculate and release the balance to the claimants in terms of the impugned judgment.

11. The statutory amount deposited by the insurance company shall be refunded.

R.K.GAUBA, J.

OCTOBER 27, 2017
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