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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
*Decided on: 12<sup>th</sup> October, 2017*

+ MAC APPEAL No. 306/2011

ORIENTAL INSURANCE CO. .... Appellants

Through: Mr. Tarkeshwar Nath, Mr.  
Saurabh Kumar Tuteja & Mr.  
Onkar Nath, Advs.

versus

MADAN LAL & ORS. .... Respondent

Through: None.

**CORAM:**

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

**JUDGMENT (ORAL)**

1. Bharat Bhushan, a bachelor, then about 20 years old, was moving on motorcycle bearing registration no. DL 35AQ 7432 on 28.12.2005 when he came to be involved in a motor vehicular accident that is proved to have occurred due to negligent driving of oil tanker bearing registration no. GJ 8U 2821, admittedly insured against third party risk with the appellant insurance company (insurer) for the period in question. It appears that two other persons, Satish and Ravi, were also injured in the same accident. All the three victims were taken to the hospital. Bharat Bhushan remained under indoor treatment in Brahm Shakti Hospital till 11.01.2006. After discharge from the hospital, however, he developed seizures and was examined on 27.02.2006 at Lok Nayak Hospital. On 12.06.2006, he expired during treatment in Lok Nayak Hospital, the cause of death having been recorded as cardio pulmonary arrest with acute viral hepatitis and head

injury. Accident claim case (case no. 133/2009) had been instituted during the life time of the said victim on 24.02.2006 for and on his behalf seeking compensation for injuries suffered. After his death, however, the said claim case was taken over by his parents, they being first and second respondents (collectively, the claimants) who incorporated suitable amendments in the pleadings, the claim having been converted into one of fatal accident.

2. After inquiry, the Tribunal, by judgment dated 07.01.2011, upheld the case that death had occurred due to injuries suffered in the accident that had been caused on account of negligent driving of the above mentioned vehicle insured with the appellant. The Tribunal awarded compensation in the total sum of Rs. 5,36,000/-, calculating it thus:-

| S.No. | Heads                            | Compensation   |
|-------|----------------------------------|----------------|
| 1.    | Loss of dependency               | Rs. 4,41,000/- |
| 2.    | On account of medical expenses   | Rs. 50,000/-   |
| 3.    | Funeral & miscellaneous expenses | Rs. 10,000/-   |
| 4.    | Loss of estate                   | Rs. 10,000/-   |
| 5.    | Loss of love & affection         | Rs. 25,000/-   |
|       | Total                            | Rs. 5,36,000/- |

3. The appellant (insurer) was directed to pay the above said amount with interest @ 7.5% per annum.

4. By the appeal at hand, the insurer reiterates its plea as had been taken before the Tribunal to the effect that there is no connection between the cause of death and the injuries suffered in the accident. This plea must be noted and rejected in view of the sound reasons set out in the impugned judgment by the Tribunal. The Tribunal has gone by the chronology of events as brought out by the evidence relating to the record of treatment in various medical institutions right from the date of the accident till death. The connection is clearly established. The jaundice may have surfaced later but then it is clear that the said complication also was relatable to the injuries suffered and in the course of treatment undertaken thereafter. The conclusion reached by the Tribunal in these circumstances does not call for interference.

5. It was the claim before the Tribunal that the deceased was earning his livelihood as a clerk with an advocate (PW-10) who, by her testimony proved the educational qualification (12<sup>th</sup> pass) of the deceased as well. It appears that the Tribunal noted that the minimum wages payable to a matriculate during the relevant period were Rs.3613/-. But, it accepted the evidence of PW-10 and thereafter added the element of future prospects of increase in income to the extent of 50%. The insurer takes exceptions to the addition of element of future prospects on the ground that this was not called for.

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. While there is merit in the submission of the insurer that in absence of proof of progressive rise in income, there being no indication of the employment being regular, the element of future prospects could not have been added, it was improper to ignore the

minimum wages which would actually be higher than the wages that the advocate (employer) was dishing out to the deceased. Since the minimum wages of a matriculate at the relevant time were Rs.3613.90, rounded off to Rs. 3614/-, the loss of dependency is calculated with the multiplier of 14, which was correctly chosen, as  $(3614 \div 2 \times 12 \times 14)$  Rs. 3,03,576/-, rounded off to Rs. 3,04,000/-.

9. It is, however, noted that the non-pecuniary damages awarded by the Tribunal are deficient. Following the view taken in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshmamma* (2015) 9 SCC 150, compensation in the sum of Rs. 1,00,000/- on account of loss of love & affection and Rs. 25,000/- each towards loss of estate and funeral expense are added.

10. Thus, the total compensation payable in the case is computed as  $[3,04,000 + 1,00,000 + 25,000 + 25,000]$ , Rs. 4,54,000/- (Rupees four lakhs fifty four thousand only)]. The award is modified accordingly.

11. It is noted that the Tribunal has levied interest only @ 7.5 % per annum. 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% (nine per cent) per annum from the date of filing of the petition till realization.

12. The insurance company also reiterates the issue of contributory negligence on the ground that two persons were riding on the pillion of the motorcycle in question. The Tribunal has considered this issue

and, in the facts and circumstances of the case, declined to grant any relief on such account noting that there was a case of negligence on the part of the driver of the oil tanker. This Court declines to interfere with the view taken on the subject by the Tribunal within its judicial discretion.

13. The insurance company had been directed by order dated 04.04.2011 to deposit the entire awarded amount with the Registrar General and out of such deposit 50% was allowed to be released to the claimants, the balance kept in fixed deposit. It is noted that the Tribunal has specified the share of each claimant. Since the principal amount of the compensation has been reduced, it is directed that the amount already released to the first appellant (father) shall be treated as his share in the compensation, the entire balance now payable to go to the second respondent (mother) only. The registry shall calculate the balance payable to her in terms of the modified award and release the balance held in deposit, refunding the excess, if any, to the insurance company. Conversely, if there is any deficiency in the deposit, the same shall be made good by the insurance company by requisite deposit with the tribunal within thirty days.

14. The statutory amount shall be refunded after proof of the award having been satisfied.

15. The appeal is disposed of in above terms.

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

**OCTOBER 12, 2017/nk**