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

Decided on: 11th September, 2017

\+ MAC.APP. 170/2016 and CM 6579/2016

SHRIRAM GENERAL INSURANCE CO LTD ..... Appellant

Through: Mr. Priyadarsi Acharya, Advocate

versus

DEEP CHAND & ORS ..... Respondents

Through: Mr. M.K. Sharma, Adv. for R-1 & 2

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

JUDGMENT (ORAL)

1. Vikas Kumar, 19 years old, a bachelor, son of the first and second respondents (claimants), died due to the injuries suffered on account of a motor vehicular accident that occurred on 19.03.2014 at about 11.30 p.m. due to the negligent driving of a truck bearing registration no.UP-17B-3511 (truck), admittedly insured against third party risk with the appellant / insurance company. The claimants instituted accident claim case (case no.754/2014) on 10.07.2014 seeking compensation impleading, besides the driver-cum-owner of the truck, its insurer (i.e. the appellant).

2. After inquiry, by judgment dated 22.12.2015, the Motor Accident Claims Tribunal (Tribunal), awarded compensation in the

sum of Rs.16,47,924/- and directed the insurer to pay with interest at the rate of 9% p.a. The said amount includes Rs.15,87,924/- towards loss of dependency calculated on the basis of minimum wages (Rs.9,802/-) on which 50% was added towards future prospects of increase and the multiplier of 18 applied taking the age of the deceased as the benchmark after deduction of 50% towards personal and living expenses.

3. The insurer, by the appeal at hand, questions the aforementioned computation on the grounds that the future prospects could not have been added and that the multiplier should have been chosen as per the age of the mother.

4. 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.

5. 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.

6. Since there was no formal proof of regular employment, leave alone the possibility of future prospects of increase, such element will have been kept out.

7. As per the copy of the election identity card of the second respondent (mother), submitted at the hearing today, her age as on 01.01.2015 was 52 years. In this view, on the relevant date of accident, she would be 51 years old and, thus, the multiplier of 11 would apply. The loss of dependency is recomputed as [Rs.9802 / 2 x 12 x 11] Rs.6,46,932/-, rounded off to Rs.6,47,000/- (Rupees Six lakh and forty seven thousand only).

8. It is, however, noted that the tribunal has not properly considered the awards under the non-pecuniary heads of damages, Rs.25,000/- each towards the head of loss of love and affection and funeral expenses and Rs.10,000/- towards loss to estate being inadequate. Having regard to the date of the accident, following the ruling in *Shriram General Insurance Co Ltd v. Usha, MAC.APP. 160/2015*, decided on 05.05.2016, award of Rs.1,50,000/- towards loss of love and affection and Rs.50,000/- each towards loss of funeral expenses and loss to estate are added.

9. This would mean the total compensation in the case would come to [Rs.6,47,000/- + 1,50,000/- + Rs.50,000/- + Rs.50,000/-] Rs.8,97,000/-. (Rupees Eight lakh and ninety seven thousand). The award is modified accordingly. It shall carry interest as levied by the tribunal.

10. By judgment dated 24.02.2016, the insurer had been directed to deposit the entire awarded amount with up-to-date interest with the tribunal and out of such deposit, 50% (fifty percent) was allowed to be released to the claimants. The balance shall be released to the claimants in terms of the modified award, refunding the excess in deposit to the insurance company.

11. The statutory amount, if deposited, shall be refunded.

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

R.K.GAUBA, J.

SEPTEMBER 11, 2017

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