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

Decided on: 7th September, 2017

+ **MAC.APP. 213/2017 & CM No. 9046/2017**

ORIENTAL INSURANCE CO LTD Appellant

Through: **Mr. R.K. Tripathi, Adv.**

Versus

MOHD SHAKEEL & ORS Respondents

Through: **Mr. Sudhanshu Tiwari, proxy
for Mr. Saurabh Kansal, Adv.**

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Mohd. Aziz, 22 years old, a bachelor, died in motor vehicular accident that occurred on 25.10.2011 due to negligent driving of car bearing registration no. DL7CB 6313, concededly insured against third party risk with the appellant insurance company. Accident claim case (MACT 228/2012, new no. 14768/2015) was instituted by his parents and siblings, they being first to seventh respondents (collectively, the claimants) on 02.07.2012, seeking compensation. The Tribunal, after inquiry, by judgment dated 23.11.2016, has awarded compensation in the total sum of Rs. 12,13,272/-, this inclusive of Rs. 1,00,000/- towards loss of love & affection, Rs.10,000/- towards loss of estate and Rs. 25,000/- for funeral expenses. In addition, Rs. 10,78,272/- towards loss of dependency.

2. The insurer, on which the liability to pay has been fastened, assails the impugned judgment of the tribunal submitting that since there was no clear proof of the regular employment of the deceased or income of the deceased having been adduced, it having been notionally assessed at Rs. 6,656 with the help of minimum wages, the factor of future prospects of increase was wrongly added and that the multiplier of 18 was wrongly chosen ignoring the fact that the claim was primarily for and on behalf of the parents.

3. Having heard the learned counsel on both sides and having gone through the record, this Court both the contentions of the insurance company to be correct.

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. Lalita 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.

6. Since there was no clear proof of regular employment or earnings of the deceased, the element of future prospects will have to be kept out.

7. The question of choice of multiplier in the case of claim for compensation in the cases of bachelor’s death, titled *Reliance General Insurance Company Limited vs. Gomti & Ors.*, MAC APP.467/2016, decided on 24th August, 2017, has observed as under:-

“6. The question as to the choice of multiplier in cases of deaths of bachelors, had come up before this Court in MAC appeal No. 431/2016 National Insurance Co. Ltd. vs. Mohd. Siddique & Ors. decided on 18th July, 2017, where it was urged on behalf of the insurance company that the law laid down by the Supreme Court in cases of General Manager, Kerala State Road Transport Corporation vs. Susamma Thomas & Ors., (1994) 2 SCC 176 and U.P. State Road Transport Corporation and Ors. vs. Trilok Chandra and Ors., (1996) 4 SCC 362 continues to prevail as the binding precedent. This Court, after examining the issue in light of the decisions in aforementioned cases and in the cases of Reshma Kumari vs. Madan Mohan (2013) 9 SCC 65 and noting the dicta in Central Board of Dawoodi Bohra Community & Anr. v. State of Maharashtra & Anr., (2005) 2 SCC 67; Safiya Bee v. Mohd. Vajahath Hussain @ Fasi, (2011) 2 SCC 94 and Union of India & Ors. v. S.K. Kapoor, (2011) 4 SCC 589, held as under:-

“16. Since the decision in Trilok Chandra and Ors., (supra) by a bench of three Hon’ble Judges is prior in time in relation to the decisions in Reshma Kumari (supra) and Munna Lal Jain (supra), it is the statement of law on choice of multiplier in the former which is to be taken as the binding precedent. Thus, this court will follow the dictum in the said judgment and adopt the multiplier according to the age of the deceased or that of the claimants, whichever is higher”. ”

8. Since the age of the mother was 55 years on the relevant date, the multiplier of 11 will have to be applied.

9. Thus, the loss of dependency is recalculated as $(6656 \div 2 \times 12 \times 11)$ Rs. 4,39,296/- rounded off to Rs. 4,40,000.

10. It is noted that the non-pecuniary damages are not adequately taken care of. Having regard to the date of accident, following the dispensation in MAC.APP.No.160/2015 *Shriram General Insurance Co Ltd v. Usha* decided by this court on 05.05.2016, the award of Rs.1,50,000/- towards loss of love & affection and Rs.50,000/- each towards loss of estate and funeral expense are added. The total compensation in the case, thus, comes to Rs. (4,40,000 + 1,50,000 + 50,000 + 50,000/-) Rs. 6,90,000/-(Rupees six lakhs and ninety thousand only). The award is modified accordingly. The tribunal treated only the third claimant Jamiya Khatoon (mother of the deceased) as the dependent and granted the award in her favour. The said finding shall remain undisturbed.

11. By order dated 06.03.2017, the insurance company was called upon to deposit the entire awarded amount with interest and, by

subsequent order dated 30.05.2017, fifty per cent (50%) thereto was allowed to be released.

12. The registry shall now calculate the amount payable in terms of the modified award and release the balance from out of the amount kept in fixed deposit refunding the excess, if any, with corresponding interest to the insurance company.

13. The appeal is disposed of in above terms.

14. The statutory amount shall be refunded.

R.K.GAUBA, J.

SEPTEMBER 07, 2017

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