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

Decided on: 27th July, 2017

\+ MAC APPEAL No. 148/2015

NATIONAL INSURANCE COMPANY LTD. ..... Appellant

Through: Mr. Manoj R. Sinha, Adv.

versus

RAJ KUMAR & ORS. ..... Respondents

Through: None.

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

<u>JUDGMENT (ORAL)</u>

1. The first respondent, then aged 40 years, suffered injuries and permanent disability, assessed to be functional disability to the extent of 55%, as a result of motor vehicular accident that occurred on 11.03.2009 due to rash driving of motor vehicle no. DL 3C AD 1661, which was admittedly insured against third party risk with the appellant insurance company (insurer). He filed accident claim case (suit no. 90/2014) on 20.03.2010 seeking compensation. The tribunal, after inquiry, by judgment dated 14.11.2014, awarded compensation in the total sum of Rs. 8,82,445/- with interest @ 9% per annum in his favour fastening the liability on the appellant. The said amount of compensation included Rs. 5,84,199/- calculated as compensation payable on account of permanent disability, it being the consequent

loss of future income, other components of the compensation being for loss of amenities of life, loss of wages, pain & suffering, disfigurement, medicines & medical treatment, conveyance and special diet.

2. The insurer is in appeal questioning the computation of loss of future income on account of permanent disability pointing out that there was no proof of actual income or engagement in a particular trade adduced and that the income had to be assumed on the basis of minimum wages Rs. 3,934/- payable for unskilled workers. The insurer takes exception to the addition of 50% towards future prospects of increase over and above the minimum wages.

3. 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.

4. 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 12.1.2015, 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.

5. In the given fact-situation where there was no proof of actual employment or earnings, the element of future prospects could not have been added. In these circumstances, the loss of future income is recomputed on the basis of multiplier of 15 as (3934 x 55÷ 100 x 12 x 15) Rs. 3,89,466/-. This would mean the award must be reduced by Rs. (5,84,199 – 3,89,466) Rs. 1,94,733/-.

6. Consequently, the award is modified as (8,82,445-194733) Rs. 6,87,712/- rounded off to Rs. 6,88,000/-. Needless to add, it shall carry interest as levied by the tribunal.

7. By order dated 13.02.2015, the insurer had been directed to deposit 75% of the awarded amount with proportionate interest which was allowed to be released to the claimant. The insurance company shall pay the balance, if any, by requisite deposit with the tribunal within 30 days.

8. The statutory amount shall be refunded.

9. *Dasti.*

R.K.GAUBA, J.

JULY27, 2017/nk