

\$~R-331 to 334

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

Decided on: 13th October, 2017

+ MAC APPEAL No. 408/2011

NATIONAL INSURANCE CO. LTD. Appellant
Through: Mr. Manoj R. Sinha, Adv.

versus

GURDEEP SINGH & ORS. Respondents
Through: Mr. Anshuman Bal, Adv. for R-
1 & 2.

+ MAC APPEAL No. 411/2011

NATIONAL INSURANCE CO. LTD. Appellant
Through: Mr. Manoj R. Sinha, Adv.

versus

GURDEEP SINGH & ORS. Respondents
Through: Mr. Anshuman Bal, Adv. for R-
1 & 2.
Mr. Navneet Goyal, Adv. for R-
3, 5, 6 & 7.

+ MAC APPEAL No. 423/2011

SARIFAN BANO & ORS. Appellants
Through: Mr. Navneet Goyal, Adv.

versus

GURDEEP SINGH & ORS. Respondents
Through: Mr. Manoj R. Sinha, Adv. for
R-3.

+ MAC APPEAL No. 427/2013

GURDEEP SINGH & ORS. Appellants
Through: Mr. Anshuman Bal, Adv.
versus

NATIONAL INSURANCE CO. LTD. Respondents
Through: Mr. Manoj R. Sinha, Adv.

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

JUDGMENT (ORAL)

1. On 26.03.2007, Sartaz Hussain, aged about 45 years, earning his livelihood as cutting tailor master, was riding his bicycle with Mohd. Mumtaz aged 20 years, a bachelor riding on the carrier seat. At about 10.45 p.m. their cycle was hit by truck bearing registration no. HR 46B 7073, it being driven negligently by Gurdeep Singh (a respondent in these appeals). While Sartaz Hussain died on the spot, Mohd. Mumtaz succumbed to injuries and died during the course of treatment. Two accident claim cases were brought before the motor accident claims Tribunal, one (MACT 627/08/07), by the wife and other members of the family dependency on Sartaz Hussain, they being the appellants in MAC Appeal No. 423/2011 and, the other (MACT 629/08/07), by the parents of deceased of Mohd. Mumtaz. Both were clubbed for inquiry and decided by common judgment dated 17.01.2011 by the Tribunal upholding the claim that deaths had occurred due to negligent driving of the truck.

2. The Tribunal awarded compensation in the total sum of Rs. 10,81,200/- in the case of claim on account of death of Sartaz Hussain, the said amount inclusive of Rs. 10,54,200/- towards loss of dependency, Rs. 10,000/-each towards loss of love & affection and loss of consortium, Rs. 2,000/- towards funeral expenses and Rs. 5,000/- on account of loss of estate. In the case of death of Mohd. Mumtaz compensation in the sum of Rs. 5,46,000/- was granted, it inclusive of Rs. 4,68,450/- for loss of dependency, Rs. 50,000/- towards loss of love & affection, Rs. 2,000/- towards funeral expenses and Rs. 5,000/- for loss to estate. The liability to pay the compensation in each case was fastened initially on the insurance company (appellant in MAC Appeal Nos. 408 and 411/2011) though its contention about breach of terms and conditions of the insurance policy having been accepted, it was granted recovery rights against the driver and owner of the vehicle. The insurer was directed to pay the said amounts of compensation with interest @ 7.5 % per annum.

3. The claimants in the case arising out of death of Sartaz Hussain have come up with MAC Appeal No. 423/2011, seeking enhancement. The claimants in the case on account of death of Mohd. Mumtaz have filed cross-objections under Order XLI Rule 22 of the Code of Civil Procedure, 1908 (CPC), which application (CM No. 20287/2011) was directed to be registered as an independent MAC Appeal No. 427/2013 by order dated 1st May, 2013. It appears that the registry has wrongly captioned MACA 427/2013 as one filed by the driver and owner of the vehicle in question. It shall incorporate suitable

corrections in its records. Be that as it may, the said cross-appeal also seeks enhancement of compensation on account of death of Mohd. Mumtaz.

4. The learned counsel for the insurance company and for the respective claimants in the two cases have been heard at length. The record has been perused.

5. In the case on account of death of Sartaz Hussain, the claimants had proved the income of the deceased with the help of income-tax returns (ITRs) for the assessment years (AY) 2004-05 and 2005-06. The income for AY 2005-06 was proved to be Rs. 97,255/-. The Tribunal on this basis added the element of future prospects of increase to the extent of 50%. Given the age of deceased (45 years) this element should not have exceeded 30% [*Sarla Verma & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121]. The learned counsel for the claimants in above case, however, points out that the tribunal had deducted Rs. 8840/- towards income tax liability. It is submitted that in the income-tax return (PW-1/5) for AY 2005-06, the earnings to the above extent did not attract any tax liability. The argument is that there was no requirement of deduction on such account. It is further submitted that non-pecuniary damages granted are deficient.

6. The insurance company's argument about the extent of future prospects being correct, the loss of dependency is re-calculated ($97255 \times 130 \div 100 \times 2 \div 3 \times 14$) Rs. 11,80,027.33, rounded off to Rs. 11,81,000/-. The grievance of the claimants about the inadequacy of

non-pecuniary damages is correct. Following the rulings 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/- each on account of loss of love & affection and loss of consortium and Rs. 25,000/- each towards loss of estate and funeral expense are added. Thus, the total compensation on account of death of Sartaj Hussain is computed as (11,81,000+ 1,00,000 + 1,00,000 + 25,000 + 25,000) Rs, 14,31,000 (Rupees fourteen lakhs thirty one thousand only).

7. In the case of death of Mohd. Mumtaz there is no clear proof of earnings or employment. Therefore, the tribunal went by minimum wages of Rs. 3470/-, but added the element of future prospects of increase in income. The insurance company takes exception to this method of calculation.

8. 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.

9. 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.

10. In absence of clear proof about employment or earnings much less the progressive rise, the element of future prospects is kept out. The tribunal applied the multiplier of 18, ignoring the fact that the claim was on account of death of a bachelor by his parents. As per the voter identity card (page 261 of the tribunal’s record), the second claimant Jubida Khatoon (mother) was 34 years old as on 01.01.1995. In this view, she would be 46 years old when the death occurred. Thus, the multiplier of 13 would need to be applied.

11. The loss of dependency in the case of claim on account of death of Mohd. Mumtaz is recomputed as $(3470 \div 2 \times 12 \times 13)$ Rs. 2,70,660/-, rounded off to Rs. 2,71,000/-. It is noted that Rs. 20,000 was granted towards medical expenses. Adding the non-pecuniary damages, as in the other case, 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, the total compensation on account of death of Mohd. Mumtaz is recomputed as $(2,71,000 + 1,00,000 + 25,000 +$

25,000 + 20,000) Rs. 4,41,000/-(rupees four lakhs forty one thousand only).

12. The awards in both the cases are modified accordingly.

13. Following the consistent view taken by this court, the rate of interest is increased in each case to 9% (nine per cent) per annum from the date of filing of the petition till realization. [see judgment dated 22.02.2016 in MAC.APP. 165/2011 *Oriental Insurance Co Ltd v. Sangeeta Devi & Ors.*]

14. By similar orders passed on 9th May, 2011 in MAC Appeal Nos. 408/2011 and 411/2011, the insurance company had been directed to deposit the entire impugned awards with the Registrar General of this Court and out of such deposits 50% was allowed to be released to the claimants, the balance directed to be kept in fixed deposits. The registry shall now calculate the amount payable to the claimants in terms of the modifications ordered above, releasing the balance, if any, to the claimants, and refunding the excess, if any, to the insurance company. Conversely, if there is any deficiency, the insurance company will be obliged to deposit the same with the tribunal within thirty days.

15. The statutory amounts shall be refunded.

16. The appeals are disposed of in above terms.

R.K.GAUBA, J.

OCTOBER 13, 2017

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