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

Decided on : 26th October, 2017

+ **MAC APP. 191/2017**

NATIONAL INSURANCE CO. LTD. Appellant
Through: **Mr. Rakhi Dubey, Adv.**

versus

OMBATI & ORS. Respondents
Through: **None.**

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

ORDER (ORAL)

1. Amit @ Bittoo, aged 38 years, died due to the injuries suffered in a motor vehicular accident that occurred on 06.03.2013 due to the negligent driving of a bus bearing registration no.UP-17-6780 admittedly insured against third party risk with the appellant / insurance company for the period in question. Two accident claim cases came to be filed before the Motor Accident Claims Tribunal (Tribunal), one (MACT 97/2013) for and on behalf of the parents and the minor son, aged 11 years of the deceased, and the other (MACT 120/2013) by the wife of the deceased, adding the said son as co-petitioner. While in the first case the widow Meenu was shown in the array of respondents, in the second case, the parents were included

amongst the respondents. In each case the driver, owner and insurer of the offending vehicle were the prime respondents. The Tribunal clubbed both the cases and decided them by a common judgment dated 06.01.2017. On the basis of evidence led, a finding was returned that the death had occurred due to the accident which had been caused on account of the negligent driving of the bus. The tribunal determined compensation in the total sum of Rs.22,67,785/- and fastened the liability on the insurer to pay with interest at 9% p.a. apportioning the award amongst the four claimants by specifying the ratio.

2. The insurer, by the appeal at hand, questions the calculation of loss of dependency on the ground the tribunal has fallen into error by adding the element of future prospects of increase against the backdrop of the facts wherein the claimants were unable to show any regular gainful employment, much less any progressive rise in income.

3. From the record of the tribunal, it is noted that the parents had claimed that the deceased was engaged in a business. They produced income tax return (ITR) for the year 2007-2008 (Ex. PW2/A) and also proved that the deceased was a graduate (PW1/5). The claimants, however, were unable to muster any clear proof of the nature of work in which the deceased was engaged much less of his earnings around the time of the death. In these circumstances, the tribunal felt constrained to go by the minimum wages payable to a graduate (Rs.9594/-). It added the element of future prospects of increase to the extent of 50% to calculate the loss of dependency.

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. The learned counsel appearing for the parents of the deceased (first and second respondents) and for the wife and minor son of the deceased (third and fourth respondents) have been asked at the hearing as to whether they are in a position to muster better proof of gainful

employment of the deceased or of his earnings. They, however, expressed inability to adduce any such evidence and expressed satisfaction with the calculation on the basis of minimum wages.

7. In the above facts and circumstances where there is no clear proof of gainful employment of the deceased much less that of his earnings and there being no clear proof of progressive rise in income, the element of future prospects is kept out. Applying the multiplier of 15 and making a deduction of one-fourth towards personal expenses, loss of dependency is recalculated as $[Rs.9594 \times \frac{3}{4} \times 12 \times 15]$ Rs.12,95,190, rounded off to Rs. 12,96,000 (Rupees twelve lacs and ninety six thousand only).

8. It is noted that the award under the non-pecuniary heads of damages are not in sync with the dispensation that is generally made in such like cases of accident of same vintage. Following the ruling in *Shriram General Insurance Co Ltd v. Usha*, MAC.APP.No.160/2015, decided on 05.05.2016 awards of Rs. 1,50,000 each towards loss of love and affection and loss of consortium and Rs. 50,000 each towards loss to estate and funeral expenses are added.

9. Thus, compensation in the case comes to (Rs. 12,96,000+Rs.1,50,000+ Rs.1,50,000+ Rs.50,000+ Rs.50,000) Rs. 16,96,000 (Rupees Sixteen lacs and Ninety six thousand only). The award is modified accordingly.

10. In the appeal, the insurer has also taken exception to the levy of interest at the rate of nine per cent (9%) per annum. Such rate of

interest is in accord with the view consistently taken by this Court. [see judgment dated 22.02.2016 in MAC.APP. 165/2011 *Oriental Insurance Co Ltd v. Sangeeta Devi & Ors.*]. Therefore, there is no case made out for interference on that score.

11. The apportionment of the award as directed by the tribunal shall be followed.

12. By order dated 28.02.2017, the insurance company had been directed to deposit the entire awarded amount with interest with the tribunal within four weeks as a pre-condition to stay against execution. The tribunal shall now calculate the amount payable to the claimants in terms of the modification ordered above and after releasing the same refund the excess to the insurance company.

13. Statutory amount shall also be refunded.

14. This disposes of the appeal and the applications filed therewith.

R.K.GAUBA, J.

October 26, 2017

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