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

Decided on: 6th September, 2017

+ **MAC.APP. 218/2017 and CM APPL.9124/2017 (stay)**

NATIONAL INSURANCE COMPANY LIMITED

.....Appellant

Through: Ms. Hetu Arora Sethi, Advocate

versus

JAGDISH & ORS

..... Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. On 22.09.2014, Vipin Kumar, aged over 18 years and nine months (born on 01.01.1996), a bachelor, suffered injuries in a motor vehicular accident at about 10:45 p.m. involving negligent driving of car bearing registration No.DL-1YD-1753, admittedly insured against third party risk with the appellant insurance company (insurer) and died in the consequence. Accident claim case (MACP No.13/2015) instituted by his parents, first and second respondents (collectively, the claimants), resulted in judgment dated 06.01.2017, whereby compensation in the total sum of Rs.16,35,040/- has been awarded and the insurer has been directed to pay the same with interest @ nine per cent (9%) per annum, the said amount inclusive of Rs.13,10,040/- calculated as loss of dependency on the assumed income of Rs.8085/-

per month, it being the minimum wages of unskilled worker, this in absence of any formal proof of employment or income, and the multiplier of 18, picked up as per the age of the deceased.

2. The insurer, by the appeal at hand, questions the above mentioned calculation of loss of dependency on the ground the future prospects were inappropriately added and that the multiplier should have been adopted as per the age of the claimant parents, particularly, the mother.

3. At the hearing, there is no appearance on behalf of the claimants despite notice.

4. The learned counsel for the insurance company has been heard. Record perused.

5. The contentions of the insurance company on both the above mentioned aspects deserve to be accepted.

6. 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.

7. 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.

8. Since there was no formal proof of employment or the income of the deceased, the element of future prospects could not have been added.

9. On the issue of choice of the multiplier in the case of death of a bachelor, this Court in case 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”. ”

10. The tribunal’s record shows that the voter identity card of the mother (Ex.PW-1/2) was submitted, it having been issued on 20.12.2011, indicating her year of birth as 1981. If this were to be accepted, the mother would be 33 years old on the date the death occurred. Having regard to the age of the deceased as proved, it is clear that the declaration of the age of mother in the voter identity card is also not correct. Having regard to the description of the age of the claimants in the petition, it is assumed that mother would be in the age group of 36-40 years, thereby meriting the multiplier of 15 to be adopted for calculation of loss of dependency.

11. It is, however, noted that the tribunal also committed an error in picking up the minimum wages. Since the death had occurred on

22.09.2014, the minimum wages prevalent on that date, *i.e.*, Rs.8554/- should have been used in the calculation. The loss of dependency, thus, is re-computed as $(8554/- \div 2 \times 12 \times 15)$ Rs.7,69,860/- rounded off to Rs.7,70,000/- (Rupees Seven Lakh and Seventy Thousand Only).

12. Adding the other components of compensation, as awarded by the tribunal (Rs.3,25,000/-), the total compensation payable in the case is worked out as $(7,70,000/- + 3,25,000/-)$ Rs.10,95,000/- (Rupees Ten Lakhs Ninety Five Thousand Only).

13. The award is modified accordingly. It shall carry interest as levied by the tribunal.

14. By order dated 06.03.2017, the appellant had been directed to deposit the entire awarded amount with interest with the tribunal, and by order dated 02.05.2017, some portion thereof was allowed to be released. The tribunal shall calculate the amount payable to the claimants in terms of the award as modified above and release the same to the claimants from out of the balance which has been retained, refunding the excess to the insurance company with the statutory amount.

15. The appeal along with accompanying application stands disposed of in above terms.

16. *Dasti.*

R.K.GAUBA, J.

SEPTEMBER 06, 2017

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