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

Decided on: 31st July, 2017

\+ MAC.APP. 463/2014 and CM No.13762/2017

CHOLAMANDALAM MS GENERAL
INSURANCE CO LTD ..... Appellant
Through: Mr. Pankaj Gupta for Ms. Suman Bagga, Advocate

versus

MS RAHAT KHANAM & ORS ..... Respondents
Through: Mr. M.K. Sinha, Adv. for R-1
Ms. Mahamaya Chatterjee and Mr. R.A. Iyer for Mr. Gautam Narayan, ASC for GNCTD

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

JUDGMENT (ORAL)

1. The first respondent, then 22 years old, having studied upto 12th standard, working for gain in a private employment, suffered injuries in a motor vehicular accident that occurred on 13.11.2011 due to negligent driving of a motor vehicle no.DL-1LM-9040 admittedly insured against third party risk with the appellant insurance company. On her accident claim case (petition no.244/13), the Motor Accident Claims Tribunal (Tribunal) held inquiry and, by judgment dated 23.01.2014, found a case for compensation made out on the principle

of fault liability. It also returned a finding that the claimant had suffered injuries which had rendered her prematurely disabled, her disability having been concluded to be to the extent of 60%. The Tribunal accepted her word that she was earning Rs.8,500/- p.m. from the private service and on that basis calculated the loss of income (for a period of treatment for 2 years) and also the future loss of income due to disability and awarded total compensation in the sum of Rs.26,38,400/- with interest at the rate of 9% p.a. fastening the liability on the insurance company.

2. By the appeal at hand, the insurer questions the computation on three grounds, they being the absence of formal proof of wages earned from private service, the assessment of functional disability being unfounded and the addition of factor of future prospects of increase in calculating the loss of future income.

3. During the pendency of this appeal, directions were given for re-evaluation of the disability of the first respondent. She accordingly appeared before the board of doctors of Indian Spinal Injuries Centre which has issued a certificate dated 02.06.2017 which has come on record with the affidavit of one of the associate consultants (Orthopaedics) submitted on 04.07.2017. As per the said evaluation, the claimant is a case of Malunited interconylar fracture left femur with stiff knee. She has been found to be physically disabled, her physical impairment having been assessed to be to the extent of 40.5%.

4. The learned counsel for the insurer and the claimant now fairly agree that the future loss of income will have to be made on the basis

of the above noted assessment of disability to the extent of 40.5%, such assessment being in relation to the left lower limb. As per the evidence, the claimant was working as a sales girl in a private establishment. Having regard to the nature of job in which she has been engaged, the functional disability is assessed at 30%.

5. The learned counsel for the claimant fairly concedes that there was no formal proof of actual wages earned. In these circumstances, bearing in mind the educational qualification, the minimum wages of Rs.8112/- p.m. applicable in the case of a matriculate at the relevant time is taken as the basis.

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 12.1.2015, 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.

8. Since there was no formal proof of regular progressive rise in income, the prospects of increase of income will have to be kept out.

9. Thus, the loss of income for two years is calculated as (Rs.8,112/- x 24) Rs.1,94,688/- instead of Rs.2,04,000/-, thereby requiring reduction of Rs.9,312/-.

10. The future loss of income due to functional disability is assessed at (Rs.8,112/- x 30/100 x 12 x 18) Rs.Rs.5,25,657.60 rounded off to Rs.5,26,000/- necessitating deduction by (Rs.16,52,400/- (-) Rs.5,26,000/-) Rs.11,26,400/-.

11. It is, however, noted that the Tribunal has awarded composite sum of Rs.2 Lakhs towards loss of marriage prospects, disfigurement and loss of amenities. This seems inadequate. Keeping in view the nature of the injuries and their effect, an amount of Rs.1 Lakh each should have been awarded under these heads. This would mean net addition of Rs.1 Lakh under the said heads.

12. Thus, the total compensation in the case is computed as (Rs.26,38,400/- (-) Rs.9,312/- (-) Rs.11,26,400/- + Rs.1,00,000/-) Rs.16,02,288/- rounded off to Rs.16,03,000/-.

13. The award is modified accordingly. Needless to add, it shall carry interest as levied by the Tribunal.

14. By order dated 19.05.2014, the insurance company had been directed to deposit the entire awarded amount with upto date interest and out of such deposit 60% was allowed to be released. The Registry shall calculate the balance payable to the claimant in terms of the modified award and release the same refunding the excess with statutory deposit to the insurance company.

15. The appeal and the pending application are disposed of in above terms.

R.K.GAUBA, J.

JULY 31, 2017
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