

\$~9 & 10 (*common order*)

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

Decided on: 28th July, 2017

+ MAC.APP. 236/2016
NATIONAL INSURANCE CO LTD Appellant
Through: Mr. D.K. Sharma, Adv.

versus

JYOTI & ORS Respondents
Through: Mr. Syed Hasan Isfahani, Adv.
with Mr. Vikas Yadav, Adv. &
Mr. Parvez Zaidi, Adv.
Dr. Ritu Bhardwaj, Standing
Counsel for RSRTC

+ MAC.APP. 632/2016 and CM APPL.29248/2016
JYOTI & ORS Appellants
Through: Mr. Syed Hasan Isfahani, Adv.
with Mr. Vikas Yadav, Adv. &
Mr. Parvez Zaidi, Adv.
versus

NATIONAL INSURANCE COMPANY LTD & ORS.
... Respondents
Through: Mr. D.K. Sharma, Adv.
Dr. Ritu Bhardwaj, Standing
Counsel for RSRTC

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

JUDGMENT (ORAL)

1. Vinod Yadav, 30 years old at that time, suffered death due to injuries inflicted upon him in a motor vehicular accident that occurred on 27.01.2013 in District Bikaner, Rajasthan due to rash driving of bus bearing registration No.RJ-07PA-4841 (the bus) admittedly insured against third party risk with the appellant insurance company (the insurer). His wife and other members of the family dependant upon him (they being appellants in MAC APP.632/2016, the claimants) instituted accident claim case (Petition No.341/2013) on 20.11.2013 seeking compensation. The Motor Accident Claims Tribunal (the tribunal), after inquiry, upheld the claim on the principle of fault liability and awarded compensation which was calculated in the total sum of Rs.32,40,600/- in the following manner:-

Sl.No.	Head	Amount (in Rs.)
1)	Medical Expenses	4,13,600/-
2)	Loss of dependency	25,92,000/-
3)	Loss of Love and Affection	1,00,000/-
4)	Loss of Consortium	1,00,000/-
5)	Funeral Expenses	25,000/-
6)	Loss to estate	10,000/-
	Total	32,40,600/-

2. In calculating the loss of dependency, the tribunal took income of the deceased of the deceased at Rs.12,000/-, added 50% towards future prospects of increase, made deduction of one-fourth towards personal and living expenses, and applied the multiplier of 16.

3. The insurer, on which the liability to pay compensation has been fastened, has come up questioning the above mentioned computation of loss of dependency on the ground that there was no basis to the assumption that the income was Rs.12,000/- per month, the evidence of Ashish Kohli (PW-2) produced by the claimants having been disbelieved. The insurer also questions the addition of the element of future prospects.

4. *Per contra*, the claimants by their appeal (MAC APP.632/2016), have submitted that the multiplier of 16 was wrongly adopted and that as per *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121, the appropriate multiplier of 17 should have been the basis. It is also submitted that the award under the non –pecuniary heads of damages are inadequate.

5. There is merit in the contentions raised in both the appeals. The evidence of PW-2 was brought in by the claimants to prove that the deceased was engaged by him as an employee in his transport business at salary of Rs.18,000/- per month. This obviously could not have been believed in absence of any record whatsoever. The evidence of PW-2 was based more on his oral word than anything submitted in corroboration. In these circumstances, the tribunal could not have gone by the assumption of Rs.12,000/- as the wages. Such finding is actually without any evidence in support. The minimum wages of a skilled worker during the relevant period were Rs.9386/- per month which should have been the correct basis of calculation.

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 clear proof on record regarding employment or earnings, the element of future prospects will have to be kept aside. Having regard to the age, the multiplier of 17 was proper.

9. Thus, the loss of dependency is re-computed as $(9386/- \times \frac{3}{4} \times 12 \times 17)$ Rs.14,36,058/-.

10. Having regard to the fact that the death occurred on 27.01.2013, following the view taken in MAC.APP.No.160/2015 *Shriram General Insurance Co Ltd v. Usha* decided by this court on 05.05.2016, non-pecuniary damages in the sum of Rs.1,50,000/- each towards loss of love & affection and towards loss of consortium and Rs.50,000/- each towards loss of estate and funeral expense are added.

11. Hence, adding the element of Rs.4,13,600/- on account of medical expenses, the total re-computed compensation comes to $(14,36,058/- + 1,50,000/- + 1,50,000/- + 50,000/- + 50,000/- + 4,13,600/-)$ Rs.22,49,658/- rounded off to Rs.22,50,000/-, which shall carry interest as levied by the tribunal.

12. The award is modified accordingly.

13. It is noted that the tribunal had specified the amount falling to the share of different claimants. In terms of order dated 16.03.2016 passed in MAC APP.236/2016, the insurance company had been directed to deposit the entire awarded amount with upto date interest, out of which 50% was allowed to be released to the claimants. Since the award has been reduced, it is directed that the amount already released to the claimants other than the first claimant Jyoti (widow) shall be restricted to the amount already received by them, the entire balance falling to the share of widow (Jyoti) alone.

14. The tribunal shall re-compute the amount payable to the first claimant (Jyoti) in terms of the award as modified above, releasing it

from out of the amount deposited, refunding the excess amount to the insurance company.

15. Statutory deposit made in MAC Appeal No.236/2016 shall be refunded to the appellant insurance company.

16. Both the appeals are disposed of in above terms.

17. Pending application also stands disposed of.

JULY 28, 2017

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R.K.GAUBA, J.

