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

Decided on: 18th September, 2017

\+ MAC APPEAL No. 426/2010

ICICI LOMBARD GEN. INS. CO. LTD. ..... Appellant
Through: Mr. Pankaj Seth, Adv.

versus

USHA & ORS. ..... Respondents
Through: None.

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

JUDGMENT (ORAL)

1. The tribunal by judgment dated 07.04.2010 on accident claim case (suit no. 082/2009) of the first to fourth respondents (claimants) awarded compensation in the total amount of Rs. 9,35,376/- directing the appellant insurance company (insurer) to pay with interest @ 7.5% per annum on account of death of Sanjay Kumar in motor vehicular accident that had occurred on 12.12.2008 at about 2:45AM involving negligent driving of Toyota Qualis bearing registration no. HR 55C 5576, admittedly insured with the appellant insurance company (insurer) for the period in question. The amount of compensation included Rs. 8,45,376/- towards loss of dependency besides Rs. 25,000/- towards funeral expenses, Rs. 50,000/- towards loss of love & affection, Rs.10,000/- towards loss of consortium and Rs. 5,000/-

towards loss of estate. The insurer questions the computation of loss of dependency on the ground there was no proof of employment or actual income of the deceased for which reason the tribunal was constrained to go by the minimum wages of skilled labour (Rs.3,683/-) over and above which the element of future prospects of increase in income was wrongly factored in.

2. 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.

3. 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.

4. In the facts and circumstances where there was no clear proof of employment or income, the element of future prospects has to be kept out. The loss of dependency is recomputed as (3,683 x 3 ÷ 4 x 12 x 17) Rs. 5,63,499/-, rounded off to Rs. 5,64,000/-. It is, however, noted that the non-pecuniary damages awarded by the tribunal are grossly inadequate. 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.

5. Thus, the total compensation payable in the case is computed as (5,64,000 + 1,00,000+ 1,00,000 + 25,000 + 25,000) Rs. 8,14,000/-. (Rupees Eight Lakhs Fourteen Thousand Only) The award is modified accordingly.

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

7. By order dated 15.07.2010, the insurance company had been directed to deposit the entire awarded amount with the tribunal and out of such deposit 75% (Seventy five per cent) was allowed to be released. The tribunal shall calculate the amounts payable to the claimants in terms of the modified award and release the balance to

the claimants, if any, from the remainder held in fixed deposit refunding the excess, if any, to the insurance company. Conversely, if there is deficiency in the deposit, the insurer shall be liable to make good the same by requisite deposit with the tribunal within thirty days.

8. The appeal is disposed of in above terms.

9. The statutory deposit shall be refunded to the appellant insurance company.

R.K.GAUBA, J.

SEPTEMBER 18, 2017
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