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

Decided on: 29th August, 2017

+ **MAC.APP. 577/2014 and CM APPL.10574/2014**

UNITED INDIA INSURANCE CO LTD Appellant

Through: Mr. Priyadarsi Acharya, Advocate

versus

JASVINDER KAUR & ORS Respondents

**Through: Mr. P.K. Saxena, Advocate for R-1 &
R-2.**

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. On 24.04.2011 Ms. Jaspreet Kaur, a bachelor, 20 years old, died in a motor vehicular accident that occurred due to negligent driving of water tanker bearing registration No.DL-1GA-9830, admittedly insured with the appellant insurance company (insurer) against third party risk for the period in question. Her parents (first and second respondents), collectively, the claimants, brought accident claim case (MACP No.360/2011) instituted on 01.09.2011 seeking compensation.
2. The Motor Accident Claims Tribunal (Tribunal), by judgment dated 05.04.2014, awarded compensation in the total sum of Rs.14,02,812/-, calculating it thus:-

Sl.No.	Head	Amount in (Rs.)
1.	Loss of dependency (Rs.70,434/- x 18)	12,67,812/-
2.	Loss of love and affection	1,00,000/-
3.	For Funeral expenses	25,000/-
4.	Loss of estate	10,000/-
	Total	14,02,812/-

3. The insurance company was called upon to pay with interest @ seven and half per cent (7.5%) per annum.

4. The insurer questions the computation on the ground loss of dependency worked out is erroneous as income of the deceased was assumed on the basis of minimum wages (7826/-) to which element of future prospects was added without justification and that the multiplier of 18 was adopted ignoring the fact that the claim was by the parents in the case of death of a bachelor.

5. Both the contentions of the insurance company must be accepted.

6. It is noted that the claimant mother (the first respondent) was 38 years old as on 01.01.2008, as per voter identity card, copy of which is available at page 177 of the tribunal's record. This would mean, she was 44 years old on the date of accident occurred.

7. 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”. ”

8. Therefore, the multiplier has to be chosen on the basis of age of the mother, since it is higher, the appropriate multiplier in the present case being 14.

9. 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.

10. 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.

11. Since there was no formal proof of engagement in gainful employment of the deceased, the income having been assumed on the basis of minimum wages, the element of future prospects was uncalled for. Thus, after deduction of fifty per cent (50%) towards personal and living expenses, applying the multiplier of 14, the loss of dependency

is calculated as $(7826/- \div 2 \times 12 \times 14)$ Rs.6,57,384/- rounded off to Rs.6,58,000/- (Rupees Six Lakhs and Fifty Eight Thousand Only).

12. The non-pecuniary heads as awarded by the tribunal are inadequate. 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/- towards loss of love & affection and Rs.50,000/- each towards loss of estate and funeral expense are added. Hence, the total compensation payable in the case comes to $(6,58,000/- + 1,50,000/- + 50,000/- + 50,000/-)$ Rs.9,08,000/- (Rupees Nine Lakhs Eight Thousand Only).

13. The award is modified accordingly.

14. 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 nine per cent (9%) per annum from the date of filing of the petition till realization.

15. By order dated 16.07.2014, the insurance company had been directed to deposit Rs.10 lakhs with the Registrar General of this court as pre-condition to the stay against execution, the said amount having been allowed to be released.

16. The insurance company shall deposit the balance of its liability under the modified award with the tribunal within thirty (30) days.

17. The statutory amount shall be refunded to the appellant insurance company after proof is shown of the award having been satisfied.

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

AUGUST 29, 2017
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R.K.GAUBA, J.

