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

Decided on: 31st July, 2017

+ **MAC APPEAL No. 481/2008**

MADHU SHARMA & ORS. Appellants

Through: **Mr. J.M. Kalia & Ms. Bhawana
Garg, Advs.**

versus

**ROYAL SUNDARAM ALLIANCE INSURANCE
CO. LTD & ANR.** Respondents

Through: **Mr. Pankaj Seth, Adv. for R-1.**

+ **MAC APPEAL No. 417/2008**

**ROYAL SUNDARAM ALLIANCE INSURANCE
CO. LTD** Appellant

Through: **Mr. Pankaj Seth, Adv.**

versus

MADHU SHARMA & ORS. Respondents

Through: **Mr. J.M. Kalia & Ms. Bhawana
Garg, Advs. for
respondents/claimants.**

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Surinder Sharma, 42 years old, working for gain as partner in firm styled as M/s Surinder Kumar and Bros. (Engineer & Govt. Contractor), suffered injuries in a motor vehicular accident that

occurred on 10.12.2004, involving negligent driving of Indica car bearing registration no. DL 3CW 2846, which was admittedly insured against third party risk with M/s Royal Sundaram Alliance Insurance Co. Ltd. (appellant in MAC Appeal no. 417/2008) and died in the consequence. His wife and other family members dependent on him, they being appellants in MAC appeal No. 481/2008, instituted accident claim case (suit no. 217/2005) on 15.04.2005 seeking compensation, impleading, besides the insurance company (insurer), Manish Kumar Jain (respondent in these appeals) as first respondent, he being the driver and owner of the offending vehicle.

2. The tribunal held inquiry and, by judgment dated 17.05.2008, upheld the claim for compensation on the principle of fault liability holding the said Manish Kumar Jain to be responsible for the accident. The said finding has attained finality as it was not challenged.

3. The tribunal awarded compensation in the total sum of Rs. 15,70,000/-, it being inclusive of Rs. 12,85,680/- towards loss of dependency, besides Rs. 2,34,019/- towards expenditure on treatment for the period Surinder Sharma had survived and Rs. 50,000/- as composite compensation on account of loss of love & affection and consortium. The insurance company was burdened with the liability to pay with interest @ 7.5%.

4. Both the insurer and the claimants have filed these appeals questioning the computation, the former taking exception to the inclusion of element of future prospects of increase and the latter seeking enhancement of compensation.

5. At the hearing, the claimants through counsel press their appeal on the sole ground that the tribunal fell in error by misconstruing the proof of income of the deceased as adduced through income-tax returns (ITRs). This submission, on perusal of the tribunal's record is found to be correct and, thus, calls for suitable correction.

6. The evidence adduced before the tribunal included ITRs of the firm on one hand and of the deceased as individual taxpayer on the other, they pertaining to the assessment years 2003-2004, 2004-2005 and 2005-06. Since the accident and death had occurred in 2006, the last return submitted in July, 2006 would be beyond the event and, therefore, must be kept out for consideration. Conceding this, the claimants submitted that the ITRs of the firm, and of the individual (the deceased), upon being looked into would show that the income of the deceased was much more than what was assumed.

7. It is noted that the deceased and his father (one of the claimants) were partners in the business of the firm. They would draw, from the firm, not only salary but also interest on the capital invested and, what is crucial to the appeal of the claimants, share in the profits. The disbursal of such salary, interest and share in the profits were duly reflected in the ITRs of the firm. Having declared such profits as part of the income from the firm, the deceased in his individual ITRs would claim exemption. Be that as it may, the ITRs filed in his individual capacity also reflected the income derived out of share in the profits. The tribunal while making assessment of the income has not included the said component, which in the facts and circumstances, was erroneous.

8. In the above facts and circumstances, upon including the income on account of share in the profits, the total income that had accrued to the deceased during 2003-2004 was (1,05,162 + 2,27,846) Rs. 3,33,008. Similarly the income for assessment year 2004-2005, per his return, was (1,16,098 + 1,57,243) Rs. 2,73,341/-.

9. Since the evidence would show that the deceased had been in business for quite some time prior to the accident, it will be proper to draw average income of the deceased for two assessment years to reach the notional income that would be available in hand to him annually. This would mean the income on which the loss of dependency has to be worked out was $(3,33,008 + 2,73,341 = \text{Rs. } 6,06,349 \div 2)$ Rs. 3,03,175/-.

10. 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.

11. 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.

12. Since the deceased was earning his livelihood from business, he being over 52 years in age, the ITRs for the periods shared with the Court showing a dip in the income in the latter year, there is no case made out for any element of future prospects to be added.

13. It is noted that there were five claimants shown in the petition brought before the tribunal, fourth and fifth claimants being parents. The evidence adduced by the claimants themselves showed that the father was himself a partner, earning equally, with the deceased. In these circumstances, neither he nor the mother of the deceased would be persons of the family dependent upon him. Therefore, the deduction on account of personal & living expenses to the extent of $\frac{1}{3}^{\text{rd}}$ was correctly made by the tribunal and, having regard to the age, the multiplier of 11 properly applied.

14. The loss of dependency is, thus, recomputed as $(3,03,175 \times 2 \div 3 \times 11)$ Rs. 22,23,283.

15. It is noted that non-pecuniary damages awarded by the tribunal are inadequate. Following the rulings in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshamma* (2015) 9 SCC 150, compensation in the sum of Rs.1 lakh 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.

16. Putting together all heads of compensation including those towards medical expenditure, the total award is computed as (22,23,283 + 2,34,019 + 1,00,000 + 1,00,000 + 25,000 + 25,000) Rs. 27,07,302 rounded off to Rs.27,08, 000/-. The award is modified accordingly.

17. 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% per annum from the date of filing of the petition till realization.

18. During the hearing on these appeals, the learned counsel for the claimants submitted that the parents of the deceased have died, on 06.11.2014 and 14.12.2015 respectively, copies of the death certificates in such respect being placed on the file of MAC Appeal No. 481/2008. Even otherwise, having regard to the above-noted conclusions, the parents of the deceased could not be included amongst the dependents.

19. In the facts and circumstances, the apportionment needs to be made afresh. It is directed that fifty per cent (50%) of the awarded amount shall be payable to Madhu Sharma (widow) and the balance equally divided amongst children of the deceased, they being Radhey Shyam Sharma and Namrata Sharma. Seventy per cent (70%) of the awarded amount in favour of Madhu Sharma shall be put in fixed deposit receipt for a period of seven years with right to draw periodical interest.

20. By order dated 14.08.2008, on MAC appeal no. 417/2008, the insurance company had been directed to deposit the entire awarded amount with the Registrar General and out of such amount fifty percent (50%) was allowed to be released. Since the award has been increased the entire balance lying in deposit shall also be released to the claimants in terms of the above directions. The insurance company shall satisfy the enhanced award by requisite deposit with the tribunal within 30 days.

21. Both appeals stand disposed of in above terms.

22. The statutory amount shall be refunded to the insurance company.

R.K.GAUBA, J.

JULY 31, 2017

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