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

*Decided on: 24<sup>th</sup> July, 2017*

+ MAC.APP. 367/2016 and CM APPL.15424/2016 (stay)

NATIONAL INSURANCE COMPANY LTD..... Appellant

Through: Mr. Arihant Jain, Advocate

Versus

MADINA & ORS.

..... Respondents

Through: Mr. S.N. Parashar, Advocate

**CORAM:**

**HON'BLE MR. JUSTICE R.K.GAUBA**

**JUDGMENT (ORAL)**

1. Mohd. Bashir, aged 20 years, died in a motor vehicular accident that occurred on 30.08.2012 on account of negligent driving of truck bearing registration no.HR-38J-5216, which was admittedly insured against third party risk with the appellant insurance company. On the claim petition of his mother, wife and brother (first to third respondents), the Motor Accident Claims Tribunal (the tribunal), by judgment dated 02.02.2016, awarded compensation in the total sum of Rs.18,41,320/- with interest @ 9% per annum. The appellant (insurance company) questions the said computation by the appeal at hand.

2. Admittedly, no proof of income of the deceased was adduced. He was earning his livelihood as a rickshaw-puller. The tribunal

computed loss of dependency on the basis of minimum wages of an unskilled worker at Rs.7020/-. It, however, added 50% towards future prospects and applied the multiplier of 18 after deduction of one-third towards personal and living expenses to calculate the loss of dependency.

3. 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.

4. 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. Lalita 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.

5. It is correctly contended by the insurance company that future prospects could not have been factored in. In the given facts and circumstances, the loss of dependency is thus re-computed as  $(7020/- \times \frac{2}{3} \times 12 \times 18)$  10,10,880/-, rounded off to Rs.10,11,000/-.

6. It is noted that the non-pecuniary damages awarded by the tribunal are not in accord with the dispensation given by this court.

7. 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 and having regard to date of accident (30.08.2012), the awards under the heads of 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. Thus, the total compensation comes to (10,11,000/- + Rs.1,50,000/- + 1,50,000/- + Rs.50,000/-+Rs.50,000/-) Rs. 14,11,000/-.

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

9. By order dated 29.04.2016, the insurance company had been directed to deposit the entire awarded amount with interest, out of which 40% was allowed to be released, balance kept in fixed deposit account. The tribunal shall now calculate the balance amount payable

in terms of the modified award and release the same to the respective claimants, refunding the excess in deposit to the insurance company.

10. The pending application also stands disposed of.

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

12. *Dasti* to the parties.

**JULY 24, 2017**

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**R.K.GAUBA, J.**



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