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

Decided on: 03rd August, 2017

+ **MAC.APP. 418/2016 and CM APPL.18879/2016 (stay)**

RELIANCE GENERAL INSURANCE COMPANY LIMITED

..... Appellant

Through: Ms. Harsh Lalta, Adv. for
Ms. Shantha Devi Raman, Adv.

Versus

KAMLI DEVI & ORS. Respondents

Through: Mr. Anshuman Bal, Adv. for
R-1 to R-6.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Surya Narain Mehto @ Suraj Mandal was employed as a helper on tempo bearing registration No.HR-46B-4264 (the tempo) on 11.07.2010 when, due to its negligent driving by the seventh respondent, it met with an accident resulting in he suffering injuries that proved fatal. The tempo was registered on the relevant date in the name of the eighth respondent, it admittedly insured against third party risk with the appellant insurance company.

2. On the accident claim case (Suit No.574/2010) filed by the widow and other member of the family dependent on the deceased, they being first to sixth respondents (the claimants), the tribunal held inquiry and returned finding that a case for compensation on principle

of fault liability was made out. The said finding has attained finality as it was not challenged. The tribunal awarded compensation calculating it thus:-

Sl.No.	Head	Amount in (Rs.)
1.	Medical expenses	76,723.74
2.	Loss of dependency	9,22,172.16
3.	Loss of love and affection	1,00,000/-
4.	Loss of consortium to petitioner no.1	25,000/-
5.	Funeral expenses	20,000/-
6.	Loss of estate	20,000/-
	Total	11,63,895.90

3. The insurance company was directed to pay the said amount with interest @ 9% per annum.

4. The insurer brought this appeal pressing it on 18.05.2016 only against the claimants pointing out error in the calculation of the compensation on the ground that element of future prospects had been added even though the income had been notionally assessed and that the assumption that the deceased was 41 years old was wrong resulting in an incorrect multiplier being chosen.

5. 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.

6. 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.

7. It is noted that no formal proof of regular employment of the deceased in employment wherein he would have progressive rise in income was adduced. In these circumstances, the element of future prospects of increase has to be kept out.

8. The counsel for the appellant has placed on record photocopy of the voter identity card of the deceased indicating that he was 43 years old as on 01.01.2004. This would mean that the age of the deceased on the relevant date was 49 years. This would require the multiplier of 13

to be adopted. The learned counsel for the claimants fairly agrees to this request of the insurer but, submitted that the non-pecuniary damages have not been suitably taken care of.

9. The loss of dependency on the notional income of Rs.5278/-, after deduction of one-fifth towards personal and living expenses, on the multiplier of 13 is calculated as $(5278/- \times \frac{4}{5} \times 12 \times 13)$ Rs.6,58,694.4.

10. Having regard to the fact that the accident had occurred on 11.07.2010, following the view taken in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala vs. 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. Thus, the total compensation payable in the case is computed as $(76,723.74 + 6,58,694.4 + 2,50,000)$ Rs.9,85,418.14 /- rounded off to Rs.9,86,000/-. The award is modified accordingly. It shall carry interest as levied by the tribunal.

11. The tribunal had apportioned the specific share from out of the awarded amount to the widow and, thereafter, equally divided the rest amongst the remaining claimants. This may not be a correct approach. Having regard to the fact that the award has been reduced, even otherwise, the apportionment has to be made afresh.

12. At this stage, the learned counsel for the claimants submitted that Kiran Devi, the fourth claimant (fourth respondent) had died on 30.04.2016. He placed on record copy of the death certificate. By

order dated 18.05.2016, the insurance company had been directed to deposit the entire awarded amount with upto date interest with the tribunal and out of the such deposit, fifty percent (50%) was allowed to be released. The learned counsel for the claimants confirms that no amount was released in favour of Kiran Devi (since deceased) pursuant to such directions.

13. Having regard to the fact that the compensation has been reduced, it is directed that the amount already released in favour of the claimants other than the widow shall be treated as their share in the compensation, the entire balance in terms of the modified award would fall to the share of the first respondent (widow).

14. The tribunal shall release the amount payable to the first respondent accordingly, refunding the excess deposited to the insurance company.

15. The statutory amount shall also be refunded to the insurance company.

16. The appeal along with pending application stands disposed of in above terms.

17. *Dasti.*

R.K.GAUBA, J.

AUGUST 03, 2017

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