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

Decided on: 21st September, 2017

+ **MAC APPEAL No. 637/2010**

NEW INDIA ASSURANCE COMPANY LIMITED

..... Appellant

Through: Mr. Priyadarsi Acharya,
Advocate

versus

MANJU DEVI & ORS.

..... Respondents

Through: Nemo.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Shashi Bhusan Kumar, aged 32 years, died due to injuries suffered in a motor vehicular accident that took place on 11.09.2006 on account of negligent driving of truck bearing registration No.HR-66-0102, it having admittedly been insured against third party risk with the appellant insurance company (insurer). On the claim petition (Suit No.341/2009) instituted by first to fifth respondents (collectively, the claimants), the tribunal held inquiry and, by judgment dated 23.07.2010, awarded compensation in the total sum of Rs.16,67,000/-, the said amount inclusive of Rs.15,12,000/- towards loss of dependency. The liability to pay the said amount with interest @

seven and a half per cent (7.5%) per annum was fastened against the insurance company.

2. The insurer, by the appeal at hand, questions the calculation of loss of dependency on the ground that the element of future prospects of increase by fifty per cent (50%) was wrongly added.

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 12.01.2015, 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.

5. It is noted that the claimant had examined two witnesses Raghav (PW-2) to prove salary earned from S.N. Enterprises and Prem Chand Srivastav (PW-4) to prove income from commission from *Sahara India Parivar*. The tribunal concluded the income to the extent of Rs.7,000/- per month, but also observed that the employment was not permanent. Since there was no proof of any regular employment, much less of progressive rise in income, the element of future prospects could not have been added. After making deduction of one-fourth towards personal and living expenses, and applying the multiplier of 16, the loss of dependency is re-calculated as $(7,000/- \times \frac{3}{4} \times 12 \times 16)$ Rs.10,08,000/-.

6. It is, however, noted that the awards of Rs.10,000/- each towards loss of estate, loss of consortium and funeral expenses and Rs.1,25,000/- towards loss of love and affection, are not in *sync* with the rulings in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshamma* (2015) 9 SCC 150. Instead, non-pecuniary damages 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 expenses are added. Thus, the total compensation payable in the case is computed as $(10,08,000/- + 2,50,000)$ Rs.12,58,000/- (Rupees Twelve Lakh Fifty Eight Thousand Only).

7. The award is modified accordingly.

8. Following the consistent view taken by this Court, the rate of interest is increased to 9% per annum from the date of filing of the

petition till realization. [see judgment dated 22.02.2016 in MAC.APP. 165/2011 *Oriental Insurance Co Ltd v. Sangeeta Devi & Ors.*].

9. By order dated 24.09.2010, the appellant had been directed to deposit the entire awarded amount with the Registrar General of this Court, and out of such deposit, fifty per cent (50%) was allowed to be released and the balance was kept in interest bearing fixed deposit receipt.

10. The registry shall calculate the award, as per modification ordered above, releasing the balance in favour of the claimants in terms of the impugned award, refunding the excess to the appellant. Conversely, if the deposited amount is deficient, the insurance company will be obliged to pay by further deposit with the tribunal within thirty days.

11. The statutory amount shall be refunded.

12. The appeal stands disposed of in above terms.

SEPTEMBER 21, 2017

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R.K.GAUBA, J.