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

Decided on: 24th October, 2017

+ **MAC APPEAL No. 428/2016**

NATIONAL INSURANCE CO. LTD. Appellant

Through: **Mr. Manu Shahalia, Adv.**

versus

SITA DEVI & ORS. Respondents

Through: **Mr. S.N. Parashar, Adv. for R-1 to 4.**

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The insurance company by this appeal assails judgment dated 14.03.2016 of the tribunal whereby the accident claim case (suit no. 125/13) of first to fifth respondents (collectively, the claimants) was decided and compensation in the total sum of Rs. 13,73,205.20 was awarded with interest @ 9% per annum due to death of Lal Bahadur, aged 40 years, then earning his livelihood as a mason, in a motor vehicular accident that took place on 10.02.2013 due to negligent driving of rural transport vehicle bearing registration no. DL 1VA 9035 (RTV) which was admittedly insured against third party risk with the appellant (insurer) for the period in question. The challenge is to the computation of loss of dependency on the ground the element of future prospects to the extent of 30% was wrongly added in that the income had been notionally assessed on the basis of minimum wages

and further that the deduction on account of personal and living expenses should have been to the extent of 1/3rd, rather than 1/4th, since the second respondent (Raju) and fifth respondent (Sadan), the son and father of the deceased were wrongly taken as dependents.

2. It was pointed out by the counsel for the claimants that in the course of inquiry before the tribunal, the dependency of the father (68 year old) was not challenged and that a vague suggestion about the aforementioned son being also an earning hand was given which was properly repelled, there being no effort made on the part of the insurance company to prove facts to the contrary. Even if the said son (23 year old) were to be treated as not dependent, the other claimants being four in number, the deduction on account of personal and living expenses to the extent of 1/4th cannot be questioned.

3. It was pointed out to the counsel for the insurance company at the hearing that the tribunal has fallen into error by assuming the income at Rs. 7,254/- per month, the minimum wages for unskilled worker during the relevant period, ignoring the fact that the deceased was earning his livelihood as a mason in which view the minimum wages of semi skilled worker at least would apply. Thus, suitable correction will have to be made, and the loss of dependency is to be calculated with the minimum wages of Rs. 8,008/- per month.

4. 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.

5. 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.

6. The element of future prospects being kept out, the loss of dependency, thus, is recomputed as $(8,008 \times 3 \div 4 \times 12 \times 14)$ Rs.10,09,008, rounded off to Rs. 10,10,000/-. It is noted that the non-pecuniary damages in the sum of Rs. 1,00,000/- towards loss of love & affection, Rs. 50,000/- towards loss of consortium, Rs. 25,000/- on account of funeral expenses and Rs. 10,000/- for loss to estate are inadequate. Following the dispensation in *Shriram General Insurance Co Ltd v. Usha*, MACA 160/2015, decided on 05.05.2016, the awards under the said head need to be enhanced. The award 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. Hence, the total compensation is computed as (10,10,000 + 1,50,000 + 1,50,000 + 50,000 + 50,000) Rs.14,10,000/- (Rupees Fourteen Lakhs Ten Thousand Only).

7. In above view, the award instead of being reduced needs enhancement. The compensation is increased accordingly. It shall carry interest as levied by the tribunal. It is noted that the fifth respondent (father) died on 03.12.2015 during the pendency of these proceedings. This fact was not brought to notice of the Tribunal. In this view, the amount apportioned in favour of fifth respondent shall stand allocated as part of the compensation apportioned in favour of first respondent (Sita Devi), the widow.

8. By order dated 23.05.2016, the insurance company had been directed to deposit the entire awarded amount with the Tribunal and out of such deposit 40% was permitted to be released to the claimants. The remainder lying in deposit shall be released to the claimants in terms of the impugned judgment. The insurance company will be obliged to pay the balance on account of enhancement by requisite deposit with the Tribunal within thirty days.

9. The statutory amount is forfeited as costs in favour of Delhi High Court Legal Services Committee.

10. The appeal is disposed of as above.

R.K.GAUBA, J.

OCTOBER 24, 2017/nk