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

Decided on: 21st September, 2017

\+ MAC APPEAL No. 650/2010 and CM APPL.17652/2010

BAJAL ALLIANZ GENERAL INSURANCE COMPANY LIMITED ..... Appellant
Through: Ms. Neerja Sachdeva, Advocate

versus

URMILA DAS & ORS. ..... Respondents
Through: Nemo.

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Kartik Chandra Das, aged 39 years, died due to injuries suffered in a motor vehicular accident that took place on 24.06.2008 on account of negligent driving of a three wheeler scooter bearing registration No.DL-1RD-1608 (TSR), it admittedly being insured against third party risk with the appellant insurance company (insurer). On the claim petition (Case No.235/2008) instituted by first and second respondents (collectively, the claimants) on 01.07.2008 seeking compensation under the structured formula on principle of no-fault liability under Section 163-A of the Motor Vehicles Act, 1988, the tribunal held inquiry, and by judgment dated 07.07.2010, awarded compensation in the total sum of Rs.08,02,940/-, fastening the liability

on the insurer to pay with interest @ 7.5% per annum, the said amount inclusive of Rs.6,62,940/- calculated towards loss of dependency, Rs.25,000/- towards funeral charges, Rs.1,00,000/- towards loss of love and affection, Rs.10,000/- towards loss of consortium and Rs.5,000/- towards loss of estate.

2. The insurer, by the appeal at hand, submits that since there was no formal proof of income of the deceased, his earnings were assumed notionally with the help of minimum wages (Rs.3683/-). It is stated that the inclusion of element of future prospects of increase by the tribunal against such income is incorrect. The insurer also questions the award under non-pecuniary heads of damages submitting that in the claim petition under Section 163-A of the Motor Vehicles Act, 1988, such awards are impermissible.

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. Lalta 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. In the facts and circumstances of the case where there was no proof of regular income, the element of future prospects of increase is kept out. It is noted that in terms of second schedule appended to the Motor Vehicles Act, 1988, the multiplier of 16 would apply for the age group of 35-40 years. After deduction of one-third, the loss of dependency is re-computed as (3683/- x 2/3 x 12 x 16) Rs.4,71,424/-, rounded off to Rs.4,72,000/-.

6. Adding the general damages in terms of second Schedule appended to the Motor Vehicles Act, 1988, the total compensation in the case comes to (4,72,000/- + 9,500/-) Rs.4,81,500/- rounded off to Rs.4,82,000/- (Rupees Four Lakh Eighty Two 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 29.09.2010, 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, if any, in favour of the claimants in terms of the impugned award, refunding the excess to the appellant insurance company.

11. The statutory amount shall be refunded.

12. The appeal stands disposed of in above terms.

R.K.GAUBA, J.

SEPTEMBER 21, 2017
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