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

Decided on: 24th August, 2017

+ **MAC APPEAL No. 467/2016**

RELIANCE GEN. INS. CO. LTD. Appellant
Through: **Mr. A.K. Soni, Adv.**

versus

GOMTI & ORS. Respondents
Through: **None.**

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

JUDGMENT (ORAL)

1. Ajay Bahadur, aged 24 years, a bachelor, died in motor vehicular accident that occurred on 24.10.2012 at about 10.30 p.m., statedly due to negligent driving of truck bearing registration no. HP 64 9729, admittedly insured against third party risk with the appellant insurance company (insurer). His mother (first respondent) instituted accident claim case (MACT 415/2012) on 27.11.2012 seeking compensation. After inquiry, the Tribunal upheld her case for compensation on the basis of fault liability and, by judgment dated 18.04.2016, awarded compensation in the total sum of Rs. 13,10,148/- directing the insurer to pay with interest @ nine per cent (9 %) per annum, the said amount inclusive of Rs. 11,75,148/- towards loss of dependency, Rs. 1,00,000/- towards loss of love & affection, Rs.

10,000/- towards loss to estate and Rs. 25,000/- towards funeral expenses.

2. The insurer questions the computation on the ground that the Tribunal while calculating the loss of dependency has committed two errors, one in the choice of multiplier and, the other, in adding the element of future prospects.

3. The first respondent, inspite of due service, has failed to appear to put in contest.

4. The learned counsel for the appellant has been heard.

5. It is noted that the tribunal has chosen the multiplier of 18, going by the age of the deceased, referring in this context to decisions of the Supreme Court in *M. Mansoor & Anr. Vs. United India Insurance Co. Ltd. & Anr.* (2013) 15 SCC 603; *Amrit Bhanu Shali & Ors. vs. National Insurance Co. Ltd. & Ors.* (2012) 11 SCC 738 and *Munna Lal Jain & Ors. vs. Vipin Kumar Sharma & Ors.* JT 2015 (5) SC1

6. The question as to the choice of multiplier in cases of deaths of bachelors, had come up before this Court in MAC appeal No. 431/2016 *National Insurance Co. Ltd. vs. Mohd. Siddique & Ors.* decided on 18th July, 2017, where it was urged on behalf of the insurance company that the law laid down by the Supreme Court in cases of *General Manager, Kerala State Road Transport Corporation vs. Susamma Thomas & Ors.*, (1994) 2 SCC 176 and *U.P. State Road Transport Corporation and Ors. vs. Trilok Chandra and Ors.*, (1996)

4 SCC 362 continues to prevail as the binding precedent. This Court, after examining the issue in light of the decisions in aforementioned cases and in the cases of *Reshma Kumari vs. Madan Mohan* (2013) 9 SCC 65 and noting the dicta in *Central Board of Dawoodi Bohra Community & Anr. v. State of Maharashtra & Anr.*, (2005) 2 SCC 67; *Safiya Bee v. Mohd. Vajahath Hussain @ Fasi*, (2011) 2 SCC 94 and *Union of India & Ors. v. S.K. Kapoor*, (2011) 4 SCC 589, held as under:-

“16. Since the decision in *Trilok Chandra and Ors.*, (supra) by a bench of three Hon’ble Judges is prior in time in relation to the decisions in *Reshma Kumari* (supra) and *Munna Lal Jain* (supra), it is the statement of law on choice of multiplier in the former which is to be taken as the binding precedent. Thus, this court will follow the dictum in the said judgment and adopt the multiplier according to the age of the deceased or that of the claimants, whichever is higher”.

7. The tribunal has noted, that the claimant mother was 62 years old on the relevant date. Her age naturally being higher the multiplier of 7 would apply, as per the dispensation in *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121.

8. 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.

9. 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.

10. It is noted that the claimant (first respondent) was unable to muster any clear proof of the gainful employment of the deceased and, thus, the tribunal was constrained to go by the minimum wages of unskilled worker (Rs.7,254). In this view, the element of future prospects could not have been added.

11. Thus, the loss of dependency, after deducting 50% towards personal & living expenses in the case of bachelor’s death is recomputed as $(7254 \div 2 \times 12 \times 7)$ Rs. 3,04,668/-, rounded off to Rs. 3,05,000/-.

12. It is, however, noted that the non-pecuniary damages awarded by the tribunal are deficient. Having regard to the date of the accident, the award of Rs. 1,50,000/- is added towards loss of love & affection and Rs. 50,000/- each on account of loss to estate and funeral expenses.

13. The total compensation in the case, thus, comes is (Rs.3,05,000 + 1,50,000 + 50,000 + 50,000) Rs. 5,55,000/-. The award is modified accordingly. Needless to add, it shall carry interest as levied by the tribunal.

14. In terms of the directions in order dated 30.05.2016, the insurance company had deposited the entire awarded amount with interest with the tribunal and out of such deposit fifty per cent (50%) was allowed to be released. The tribunal shall refund the excess in deposit to the insurance company. In case of excess amount having been released, liberty is given to the insurance company to take out appropriate proceedings.

15. The statutory amount shall be refunded.

R.K.GAUBA, J.

AUGUST 24, 2017

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