$~12

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

Decided on: 11th October, 2017

\+ MAC APPEAL 41/2014

NATIONAL INSURANCE CO. LTD. ..... Appellant
Through: Ms. Rakhi Dubey, Advocate

versus

RESHMI DEVI & ORS. ..... Respondents
Through: None

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

JUDGMENT (ORAL)

1. Moti Chand, then aged 38 years, described as a shopkeeper earning his livelihood from private business died in a motor vehicular accident that occurred on 29.09.2010 due to the negligent driving of a bus bearing registration no.DL-1PA-4619. On the accident claim case (suit no.529/2010) instituted on 26.10.2010 by his wife and other members of the family dependent on him, they being first to sixth respondents in appeal (collectively, the claimants), the Motor Accident Claims Tribunal (Tribunal) held inquiry and, by judgment dated 17.08.2013, awarded total compensation in the sum of Rs.15,40,720/- directing the appellant (insurer) to pay the same with interest at the rate of 9% p.a., it being insurer of the offending vehicle, calculating the said amount thus :-

Loss of financial dependency	Rs.13,05,720/-
Loss of love and affection	Rs.1,00,000/-
Loss of Estate	Rs.10,000/-
Funeral Expenses	Rs.25,000/-
Loss of consortium to wife	Rs.1,00,000/-
Total	Rs.15,40,720/-

2. The insurer by the appeal at hand questions the calculation of loss of financial dependency on the ground that the income was notionally assessed, in absence of clear proof, with the help of minimum wages (Rs.6448/-) but the tribunal fell into error by adding the element of future prospects of increase to the extent of 50%, though making appropriate deduction of one-fourth towards personal and living expenses and correctly applying the multiplier of 15.

3. The claimants inspite of notice have failed to appear to assist.

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. 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.

6. Since there was no clear proof of the actual engagement for gain of the deceased leave alone of progressive rise in income, the element of future prospects is kept out. Therefore, the loss of dependency is calculated as [Rs.6,448/- x 3 / 4 x 12 x 15] Rs.8,70,480/-, rounded off to Rs.8,71,000/- (Rupees Eight lakh and seventy one thousand).

7. It is, however, noted that the non-pecuniary damages awarded by the tribunal are on the lower side. Following the ruling of this court in *Shriram General Insurance Co Ltd v. Usha, MAC.APP.No.160/2015*, decided on 05.05.2016, awards under the heads of loss of love and affection and loss of consortium are increased to Rs.1,50,000/- each and those towards loss to estate and funeral expenses are raised to Rs.50,000/- each.

8. Thus, the total award in the case is re-computed as [Rs.8,71,000/- + Rs.1,50,000/- + Rs.1,50,000/- + Rs.50,000/- + Rs.50,000/-] Rs.12,71,000/- (Rupees Twelve Lakh and seventy one

thousand). The award is modified accordingly. It shall carry interest as levied by the tribunal.

9. By order dated 17.01.2014, the insurance company had been directed to deposit the entire awarded amount with upto date interest and from out of such deposit, and 70% was allowed to be released to the claimants and the balance kept in fixed deposit with UCO Bank, High Court of Delhi, New Delhi. By order dated 29.01.2014, however, this court was informed by the presiding officer of the tribunal that 67.37% of the compensation has been released to the claimants in cash while the rest of the amount representing 32.63% had been put in fixed deposit receipt. By the order passed on the said date, the tribunal was directed not to release any further amount without permission from the court. The tribunal shall now calculate the balance payable, if any, to the claimant in terms of the modification in the award as directed above release it to them and refund the excess with corresponding interest to the insurance company.

10. The statutory deposit shall also be refunded to the appellant.

11. The appeal is disposed of in above terms.

Dasti.

R.K.GAUBA, J.

OCTOBER 11, 2017

yg