

\$~R-135

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

Decided on: 22nd August, 2017

+ **MAC APPEAL No. 553/2009 AND CM 16427/2009**

PARDEEP KUMAR GUPTA Appellant
Through: **Mr. Rajeshwar Kr. Gupta and**
Ms. Kovida Priyam, Advocate

versus

ABDUL GAFFAR & ORS. Respondents
Through: **None**

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

JUDGMENT (ORAL)

1. Abdul Jabbar suffered injuries in a motor vehicular accident that occurred on 05.10.2005, and died in the consequence, it becoming subject matter of investigation by the police through first information report no.416/05 of PS Khajoori Khas registered on the statement of a eye witness Kuldeep Kumar and observations of the scene of the occurrence by the investigating police officer and attendant circumstances. The respondents instituted accident claim case (MACT suit no.499/05) on 21.11.2005 impleading the appellant herein as the respondent on the averment that he was the driver-cum-owner of the two wheeler scooter bearing registration no.DL-5SE-0203 which was involved in the accident, it having occurred due to negligent driving by him. The scooter admittedly was not insured against third party

risk for the period in question. The appellant admitted being driver and owner of the scooter but denied any involvement of the scooter in the accident or negligence on his part, the position taken by him being the accident had been caused by some other vehicle which was moving ahead of him.

2. The Motor Accident Claims Tribunal (Tribunal), by judgment dated 07.09.2009, accepted the case of the claimants about the fatal accident having occurred due to negligent driving of the scooter by the appellant, awarding compensation calculated in the total sum of Rs.7,64,000/- directing the appellant to pay.

3. The appellant, by the appeal at hand, has questioned the correctness of the findings recorded on the question of involvement and on the issue of negligence, also seeking to assail the computation of compensation.

4. The appeal was admitted by order dated 04.10.2010. No one has appeared on behalf of the respondents when the appeal is taken up for hearing.

5. The appellant has been heard through counsel and the record perused.

6. The plea of the appellant about non-involvement in the accident cannot be accepted. The Tribunal has considered the evidence led before it in entirety and has primarily gone by the principle of *res ipsa loquitur*. Concededly, the appellant was present at the scene. He had also fallen down and had suffered injuries in the process, his vehicle also having suffered damage. The findings returned by the tribunal on

the question of involvement of the scooter and negligence on the part of the appellant, therefore, do not call for any interference.

7. There is, however, substance in the plea of the appellant about the computation of compensation. It is noted that the tribunal assumed the income of the deceased on the basis of minimum wages of an unskilled worker at Rs.3,166/- in as much as there was no formal proof of nature of avocation or earnings of the deceased. The tribunal thereafter added the element of future prospects and assumed the age of the deceased, aged 33 years, this on the basis of copy of the ration card (Ex. P3) and invoked the multiplier of 16. The computation was erroneous for various reasons.

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 12.01.2015, 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.

10. There was no proof of regular income of the deceased. Therefore, the element of future prospects of increase could not have been added. The age reflected in the ration card was based on a mere declaration. Better proof about the age of the deceased at the relevant time was available in the form of admission by Abdul Gaffar (PW-1) the father of the deceased, who testified that he was 45 years old when the death occurred. In this view, the multiplier of 14 should have been applied.

11. Thus, the loss of dependency is re-computed after deducting one-fourth towards personal and living expenses at (Rs.3,166/- x 3 / 4 x 12 x 14) Rs.3,98,916/-, rounded off to Rs.3,99,000/-.

12. Adding the other components of compensation awarded by the tribunal, the total compensation in the case comes to (Rs.3,99,000/- + Rs.5,000/- + Rs.5,000/- + Rs.10,000/- + Rs.60,000/-) Rs.4,79,000/-. The award is modified accordingly.

13. The appellant had been directed, by order dated 04.10.2010, to deposit an amount of Rs.3,50,000/- which was allowed to be released to the claimants. The said amount was deposited and has accordingly been released. The appellant shall deposit the balance in terms of the modified award with the tribunal within 30 days making it available to

be released to the claimants. In case of default, the interest liability in terms of the impugned judgment shall apply.

14. The appeal and the pending application are disposed of in above terms.

R.K.GAUBA, J.

AUGUST 22, 2017

yg

