$~R-116

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

Decided on: 17th August, 2017

\+ MAC.APP. 512/2009 and CM APPL.14726/2009

RELIANCE GENERAL INSURANCE CO. LTD...... Appellant
Through: Mr. Arun Yadav, Advocate

versus

ANGURI DEVI & ORS. ..... Respondents
Through: Nemo.

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

JUDGMENT (ORAL)

1. On 04.09.2007, Nouwat Singh suffered injuries in a motor vehicular accident due to negligent driving of motor vehicle described as car bearing registration No.DL-3CAF-5638, admittedly insured against third party risk for the period in question with the appellant insurance company (insurer) and died in the consequence. His wife and children, they being first to sixth respondent herein (collectively, the claimants), instituted accident claim case (MACT No.53/2008), which, after inquiry, was allowed, by judgment dated 28.08.2009, compensation in the sum of Rs.8,61,000/- having been awarded with interest @ seven and half per cent (7.5%) per annum, the liability being fastened on the appellant (insurer).

2. The insurer questions the computation by the appeal at hand pointing out that the tribunal has added the element of future prospects even though the income was assumed with the aid of minimum wages (Rs.3600/-). It is also pointed out that the tribunal had found that the second and third respondents were married sons of the deceased and, therefore, they were not dependents, the sixth respondent being married daughter, also not financially dependent. In these circumstances, there were three prime claimants they being the first, fourth and fifth respondent. The submissions of insurer is that, in this view, the deduction on account of personal and living expenses should have been made to the extent of one-third rather than one-fourth, as done by the tribunal.

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. Indeed, there being no clear evidence as to the nature of avocation or regularity of the gainful employment, the income having been assumed on the basis of minimum wages, the element of future prospects has to be kept out. Further, given the above status of the children, the deduction on account of personal and living expenses should have been made only to the extent of one-third. The tribunal correctly adopted the multiplier of 14, given the age of the deceased as 45 years.

6. In above view, the compensation on account of loss of dependency is worked out as (3600/- x 2/3 x 12 x 14) Rs.4,03,200/- rounded off to Rs.4,04,000/-.

7. It is, however, noted that the tribunal did not award the non-pecuniary damages appropriately. The tribunal awarded Rs.1,50,000/- towards loss of love and affection and Rs.10,000/- each towards loss of consortium and funeral expenses and loss of estate which was not appropriate.

8. Given the dispensation in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshmamma* (2015) 9 SCC 150, compensation in the sum of Rs.1 lakh each on account of loss of love & affection and loss of consortium and Rs.25,000/- each towards loss of estate and funeral expense are added. Thus, the total compensation payable in the case is computed as (4,04,000/- + 2,50,000) Rs.6,54,000/-.

9. The award is modified accordingly.

10. Following the consistent view taken by this Court [see judgment dated 22.02.2016 in MAC.APP. 165/2011 *Oriental Insurance Co Ltd v. Sangeeta Devi & Ors*.], the rate of interest is increased to nine per cent (9%) per annum from the date of filing of the petition till realization.

11. The tribunal apportioned the award by specifying the amounts that would fall to the share of different claimants. By order dated 21.10.2009, the insurance company had been directed to deposit the entire awarded amount with upto date interest with UCO Bank, Delhi High Court Branch, New Delhi. By order dated 09.12.2009, the learned Single Judge, then in *seisin* of the case, allowed partial release from the said deposited amount directing the balance Rs.8 lacs to be kept in fixed deposit for the period specified, allowing interest to be paid periodically.

12. The registry shall now calculate the amount payable to the claimants in terms of the modification ordered above, refunding the excess in deposit, if any, to the insurance company. In case there is

deficiency in the payment made to the claimants, the insurance company will be duty bond to make the requisite deposit of the deficient amount with the tribunal within thirty days so that it can be released to the claimants.

13. Given the fresh dispensation, it is directed that the amount already released to the other claimants shall be treated as their respective shares, the entire balance to be now paid to the first claimant (first respondent Anguri Devi) only

14. The statutory amount shall be refunded to the appellant insurance company.

15. The appeal along with accompanying application stands disposed of in above terms.

16. *Dasti.*

R.K.GAUBA, J.

AUGUST 17, 2017
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