

\$~R-259 & R-260

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

Decided on: 22nd September, 2017

+ **MAC APPEAL No. 749/2010**

ANITA & ORS. Appellants

Through: Mr. Navneet Goyal, Adv.

versus

CHAUHAN PUNAM SINGH RAJUSINGH & ORS.

..... Respondents

Through: Mr. Pankaj Gupta for Ms.
Suman Bagga, Adv. for R-3.

+ **MAC APPEAL No. 807/2010**

ICICI LOMBARD GENERAL INSURANCE CO. LTD

..... Appellant

Through: Mr. Pankaj Gupta for Ms.
Suman Bagga, Adv.

versus

ANITA & ORS. Respondents

Through: Mr. Navneet Goyal, Adv. for R-
1 to 5.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Sunil Sehrawat, aged 32 years, while driving motorcycle bearing registration no. DL 9SC 8260, suffered injuries in motor vehicular accident that occurred on 12.04.2008 due to the said vehicle

having been hit by truck bearing registration no. GJ 07UU 1398, admittedly insured against third party risk with the appellant insurance company (insurer) and died in the consequence. His wife and other members of the family dependent upon him, they now being appellants in MAC Appeal No. 749/2010 (collectively, the claimants), instituted accident claim case (MACT No. 125/2008) on 01.05.2008. The tribunal, after inquiry, by judgment dated 05.08.2010, accepted the said claim under Section 166 of Motor Vehicles Act, 1988 and awarded compensation directing the insurer of the offending vehicle (it now being appellant in MAC Appeal No. 807/2010) with interest @ 9% per annum, calculating it thus:-

S.No.	Heads	Compensatin
1.	Loss of Dependency	Rs. 8,86,000/-
2.	Loss of Love & affection	Rs. 1,50,000/-
3.	Loss of consortium	Rs. 10,000/-
4.	Funeral Expenses	Rs. 10,000/-
5.	Los of Estate	Rs. 10,000/-
	Total	Rs. 10,66,000/-

2. Both the insurer and claimants are in appeal, the former taking exception to the calculation of loss of dependency with the element of future prospects of increase in income against an income notionally

assessed and the latter submitting that the evidence of Manjit Singh (PW-3) should have been accepted and the income of Rs. 6500/- should have been the basis for such calculation. The claimants are also aggrieved with the non-pecuniary damages submitting that the same are deficient.

3. The tribunal has given sound reasons for rejecting the evidence of Manjit Singh (PW-3) proprietor of firm M/s Meenu Telecom & Travels where he claimed to have engaged the deceased as a driver. No records pertaining to the business of the said firm or even the vehicles that it owned, muchless deployment of the deceased on the same as a driver were proved. In these circumstances, the tribunal was constrained to calculate the loss of dependency with the help of minimum wages of a skilled worker.

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 cogent evidence of regular employment of the deceased, the element of future prospects could not have been added. In these circumstances, the loss of dependency is recalculated after deduction of $1/4^{\text{th}}$ towards personal & living expenses and applying the multiplier of 16 correctly chosen by the tribunal as $(4100 \times 3 \div 4 \times 12 \times 16)$ Rs. 5,90,400/-, rounded off to Rs. 5,91,000/- (Rupees Five Lakhs Ninety One Thousand Only).

7. In view of the rulings in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshamma* (2015) 9 SCC 150, the non-pecuniary damages awarded by the tribunal are found to be inadequate. The compensation in the sum of Rs.1,00,000/- 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.

8. Thus, the total compensation payable in the case is computed as $(5,91,000 + 1,00,000 + 1,00,000 + 25,000 + 25,000)$ Rs. 8,41,000/-

(Rupees Eight Lakhs Forty One Thousand Only). The award is modified accordingly. It shall carry interest as levied by the tribunal.

9. By order dated 29.11.2010 read with orders dated 15.03.2011, the insurance company was directed to deposit the entire awarded amount and from out of the same 75% (seventy five percent) was allowed to be released to the claimants. Since the tribunal specified the amounts falling to the share of the different claimants, the total award having been reduced, it is directed that the amounts already released to the claimants other than the widow (Anita), shall be treated as their respective share. The entire balance shall now go to the first claimant Anita alone.

10. The registry shall calculate the amounts payable to the claimant in terms of the modified award and release the balance to her from out of the remainder refunding the excess in deposit along with statutory deposit to the insurance company.

11. Both appeals are disposed of in above terms.

SEPTEMBER 22, 2017

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R.K.GAUBA, J.