$~R-267

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

Decided on: 25th September, 2017

\+ MAC.APP. 801/2010

SULOCHANA DEVI & ORS. .....Appellants

Through: Nemo.

versus

NEW INDIA ASSURANCE COMPANY LIMITED & ORS. ..... Respondents

Through: Ms. Neerja Sachdeva, Advocate for R-1.

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

JUDGMENT (ORAL)

1. Lalit Kumar, a bachelor, aged about 20 years, died in a motor vehicular accident that occurred on 27.05.2006, due to negligent driving of motor vehicle described as Tata bus bearing registration No.DL-1PA-4228, admittedly insured against third party risk with the first respondent (insurer) for the period in question. His parents (the appellants) filed accident claim case (Suit No.311/2006) seeking compensation. The tribunal held inquiry and, by judgment dated 13.07.2010, upheld the claim for compensation holding the bus driver responsible for the accident. The compensation was awarded in the total sum of Rs.6,55,780/- in favour of the claimants, it inclusive of Rs.5,85,780/- towards loss of dependency, Rs.50,000/- towards loss of love and affection and Rs.10,000/- each towards funeral expenses and

loss of estate . The insurer was directed to pay the same with interest @ 7.5% per annum.

2. The claimants by the appeal at hand sought enhancement of the compensation.

3. The appeal was put in the list of regulars to come up on its own turn. When it is called out, there is no appearance on behalf of the appellants. The matter has been considered with the assistance of the counsel for the insurer.

4. It is noted that the claimants have pleaded in the appeal that the deceased was earning Rs.10,000/- per month. This contention is not correct as the last salary proved was vide salary slip (Ex.PW-6/4), the total emoluments being Rs.7510/- the same as taken by the tribunal. The reliance on the recommendation for increment of Rs.2,500/- vide document (mark B) was considered by the tribunal and rejected for sound reasons. The said recommendation, was not strictly proved by cogent evidence. Even otherwise, it might have resulted in increase in the salary in future. The plea of the appellants that the income would have increased over the period thus cannot be accepted.

5. 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.

6. 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.

7. There was no clear proof of progressive rise in income of the deceased. In these circumstances, the element of future prospects could not have been added.

8. It is, however, noted that the non-pecuniary damages awarded by the tribunal are on the lower side. Following the view taken 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.1,00,000/- towards loss of love & affection and Rs.25,000/- each towards loss of estate and funeral expense are added. There shall, thus, be a net increase in the award by a sum of

Rs.(1,50,000 - 70,000) Rs. 80,000/-, raising the award to (6,55,780 + 80,000) Rs.7,35,780/- rounded off to Rs.7,36,000/- (Rupees Seven Lakh Thirty Six Thousand Only).

9. The award is modified accordingly.

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

11. The entire enhanced portion with corresponding interest shall fall to the share of first appellant (mother) only. The insurance company (first respondent) is directed to satisfy the enhanced award by requisite deposit with the tribunal within thirty days, making it available to be released to the claimant/first appellant (mother) in the form of fixed deposit receipt to be taken out from a nationalized bank for a period of seven years with provision to draw periodic interest.

12. The appeal stands disposed of in above terms.

R.K.GAUBA, J.

SEPTEMBER 25, 2017
vk