$~R-281

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

Decided on: 27th September, 2017

\+ MAC.APP.873/2010

NATIONAL INSURANCE CO. LTD. ..... Appellant
Through: Ms. Neerja Sachdeva, Advocate

versus

SARVESH & ORS. ..... Respondents
Through: None

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

<u>JUDGMENT (ORAL)</u>

1. Sonu, a bachelor, aged 19 years, died due to injuries suffered in a motor vehicular accident that occurred on 09.10.2009 due to the negligent driving of a motor vehicle described as one bearing registration no.DL-1V-8695. The accident claim case (suit no.63/10/09) instituted on 15.10.2009 by his mother (first respondent), resulted in a judgment dated 30.09.2010 whereby compensation in the total sum of Rs.7,25,000/- was granted, it having been apportioned amongst the mother and three siblings of the deceased. The amount of compensation thus awarded was directed to be paid by the appellant / insurance company, it having been calculated thus :-

Compensation for loss of dependency	Rs.7,20,000/-
Compensation for loss of estate	Rs.10,000/-

Compensation for funeral expenses	Rs.5,000/-
Compensation for loss of love and affection	Rs.40,000/-
Total	Rs.7,75,000/-
Less: Interim compensation	Rs.50,000/-
	Rs.7,25,000/-

2. The insurance company, by the appeal at hand, questions the calculation of loss of dependency pointing out two errors; one, that the tribunal has added the element of future prospects of increase in income to the extent of 50% against income notionally arrived at with the help of minimum wages (Rs.4,000/- pm.) and, second, that the deduction on account of the personal and living expenses was made to the extent of one-third.

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. Since there was no clear proof of regular employment of the deceased or of progressive rise in income, the element of future prospects has to be kept out. It being a case of a bachelor's death, the personal and living expenses has to be deducted to the extent of 50%. Upon being re-calculated, with the multiplier of 15, correctly chosen by the tribunal, the loss of dependency is worked out as [Rs.4,000/2 x 12 x 15] Rs.3,60,000/- (Rupees Three lakh and sixty thousand only).

6. It is, however, also noted that the awards under the non-pecuniary heads of damages are inadequate. Following the rulings in *Rajesh & Ors. v. Rajbir Singh & Ors., (2013) 9 SCC 54 and Shashikala V. Gangalakshmamma (2015) 9 SCC 150*, award of Rs.1,00,000/- is added towards loss of love and affection and Rs.25,000/- each towards loss to estate and funeral expenses.

7. Thus, the total compensation in the case comes to [Rs.3,60,000/- + Rs.1,00,000/- + Rs.25,000/- + Rs.25,000/-]

Rs.5,10,000/- (Rupees Five lakh and ten thousand only). Needles to add, the interim compensation already awarded shall be deducted.

8. Following the consistent view taken by this Court, the rate of interest is increased to 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*.]

9. By order dated 20.12.2010, the insurance company had been directed to deposit the entire awarded amount with up-to-date interest. By subsequent order dated 21.05.2012, fifty percent (50%) was allowed to be released to the claimant, the balance retained in fixed deposit. The Registry shall now calculate the balance payable to the claimant and release the same from the remainder refunding the excess in deposit with statutory deposit to the appellant / insurer.

10. The appeal is disposed of in above terms.

R.K.GAUBA, J.

SEPTEMBER 27, 2017
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