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

Decided on: 10th August, 2017

+ **MAC.APP. 1129/2013**

NEW INDIA ASSURANCE CO LTD Appellant

Through: **Mr. Priyadarsi Acharya,**
Advocate

Versus

RANI KAUR & ORS. Respondents

Through: **Dr. R.S. Sasan, Advocate for**
R-1 to R-4.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Gurdail Singh @ Raja, then 26 years old, died in a motor vehicular accident that occurred on 03.09.2016 due to negligent driving of Tempo Traveller bearing registration No.PB-01-2371, admittedly insured against third party risk with the appellant insurance company. His widow and other members of the family dependant on him, they being first to fourth respondents herein (collectively, the claimants) brought an accident claim case (Case No.477/2009) on 03.06.2013, seeking compensation under Section 166 of the Motor Vehicles Act, 1988 impleading, besides the appellant (the insurer), the driver and owner of the said vehicle as parties.

2. The Motor Accident Claims Tribunal (the tribunal) held inquiry and, by judgment dated 06.11.2013, upheld the claim on the principle

of fault liability holding the driver (fifth respondent herein) to have been negligent leading to the fatality.

3. By the impugned judgment, the tribunal awarded compensation in the total sum of Rs.10,82,412/- in favour of the claimants, this inclusive of Rs.8,57,412/- calculated as loss of dependency on the income notionally assessed at Rs.3736/-, it being the minimum wages of a skilled workman relevant for the period in question, the deceased being a driver holding a commercial driving licence, being no clear proof of his actual earnings. The tribunal applied the multiplier of 17, while calculating the loss of dependency, and added the factor of future prospects of increase to the extent of fifty per cent (50%), to which exception is taken by the insurer through the appeal at hand.

4. At the hearing, it is pointed out that the tribunal had later modified the award by subsequent order dated 13.12.2013 adding Rs.2,01,132/- which had been incurred as expenditure for medical treatment of the deceased after the accident and before his death, thereby raising the award to Rs.12,83,544/-.

5. While fairly conceding to the said addition towards medical expenditure as another component of the compensation by order dated 13.12.2013, the appeal is pressed only for exclusion of the element of future prospects in calculation of loss of dependency.

6. 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.

7. 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 12.1.2015, 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.

8. Since there is no clear proof of actual earnings, or of progressive rise in income, the element of future prospects had to be kept out. After deducting one-fourth towards personal and living expenses and applying the multiplier of 17, the said component is re-computed as $(3736/- \times \frac{3}{4} \times 12 \times 17)$ Rs.5,71,608/- rounded off to Rs.5,72,000/-.

9. It is noted that the tribunal made appropriate awards under the heads of loss of consortium, loss of care and guidance and funeral expenses, but it did not make any award towards loss to estate. Following the view taken in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshamma* (2015) 9 SCC 150, the award of Rs.25,000/- towards loss to estate is added.

10. Putting together all the components of compensation, including those under the non-pecuniary heads of damages and medical expenditure, the total compensation is re-computed as (5,72,000/- +1,00,000/- +1,00,000/- +25,000/- +25,000/- +2,01,132/-) Rs.10,23,132/-, rounded off to Rs.10,24,000/-. The award is modified accordingly.

11. Following the consistent view taken by this Court, however, the rate of interest levied by the tribunal (7.5% p.a.) found to be deficient, it 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.*].

12. By order dated 10.12.2013, the insurance company had been directed to deposit the entire awarded amount with interest with the Registrar General of this court and from out of such deposit, eighty per cent (80%) was allowed to be released, the balance kept in fixed deposit receipt with UCO Bank, Delhi High Court Branch. The registry shall re-calculate the amount payable to the claimants in terms of the modification ordered above, releasing the balance to the claimants and refunding the excess, if any, to the insurance company.

Conversely, if there is any deficiency, the insurance company shall deposit the same with the tribunal within thirty days, making it available to be released to the claimants.

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

14. The appeal is disposed of in above terms.

AUGUST 10, 2017

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R.K.GAUBA, J.