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

Decided on: 12th October, 2017

+ **MAC.APP. 462/2013**

SHRIRAM GENERAL INSURANCE CO LTD Appellant

Through: Mr. Sameer Nandwani, Advocate

versus

NARAYAN TIWARI AND ORS Respondents

Through: Mr. P.K. Nayyar, Adv. for R-1 &2

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Santosh Kumar Tiwari, a bachelor, 24 years old, son of the first and second respondents (collectively, the claimants) died due to the injuries suffered by him in a motor vehicular accident that had occurred on 06.01.2012 due to the negligent driving of a motor vehicle described as one bearing no.UP-16P-9482 by respondent no.3 herein admittedly insured against third party risk with the appellant / insurance company (insurer). On the accident claim petition (suit no.81/2012) jointly instituted by the claimants on 03.02.2012, it having been clubbed with another similarly placed case on account of death of Mohd. Tanveer, which had occurred in the same accident, the Motor Accident Claims Tribunal (Tribunal) held inquiry and, by

judgment dated 28.09.2012, granted compensation in the total sum of Rs.11,79,000/-, directing the appellant / insurer to pay the same with interest at the rate of 9% p.a., the said amount inclusive of Rs.11,38,924.80 towards the loss of dependency, Rs.10,000/- towards loss to estate, Rs.5,000/- towards funeral expenses and Rs.25,000/- towards loss of love and affection.

2. The insurer by the appeal at hand submits that the compensation on account of death of Santosh Kumar Tiwari has been wrongly calculated by factoring in the element of future prospects of increase to the extent of 30% even though the income was assumed notionally with the help of minimum wages (Rs.8112/-), further error being on account of choice of multiplier of 18 going by the age of the deceased ignoring the fact that the claimant mother was born in 1961.

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 income, much less of progressive rise, the element of future prospects is kept out.

6. The question as to the choice of multiplier in cases of death of bachelors, had come up before this Court in MAC appeal No. 431/2016 *National Insurance Co. Ltd. vs. Mohd. Siddique & Ors.* decided on 18th July, 2017, where it was urged on behalf of the insurance company that the law laid down by the Supreme Court in cases of *General Manager, Kerala State Road Transport Corporation vs. Susamma Thomas & Ors.*, (1994) 2 SCC 176 and *U.P. State Road Transport Corporation and Ors. vs. Trilok Chandra and Ors.*, (1996) 4 SCC 362 continues to prevail as the binding precedent. This Court, after examining the issue in light of the decisions in aforementioned cases and in the cases of *Reshma Kumari vs. Madan Mohan* (2013) 9 SCC 65 and noting the dicta in *Central Board of Dawoodi Bohra Community & Anr. v. State of Maharashtra & Anr.*, (2005) 2 SCC 67; *Safiya Bee v. Mohd. Vajahath Hussain @ Fasi*, (2011) 2 SCC 94 and *Union of India & Ors. v. S.K. Kapoor*, (2011) 4 SCC 589, held as under:-

“16. Since the decision in Trilok Chandra and Ors., (supra) by a bench of three Hon’ble Judges is prior in time in relation to the decisions in Reshma Kumari (supra) and Munna Lal Jain (supra), it is the statement of law on choice of multiplier in the former which is to be taken as the binding precedent. Thus, this court will follow the dictum in the said judgment and adopt the multiplier according to the age of the deceased or that of the claimants, whichever is higher”.

7. Given the fact that the age of the claimant mother (second respondent) was 52 years on the relevant date, the multiplier of 11 would apply. The loss of dependency is thus recomputed as (Rs.8,112/2 x 12 x 11] Rs.5,35,392/-, rounded off to Rs.5,36,000/- (Rupees five lakh and thirty six thousand).

8. It is noted that the awards under the non-pecuniary heads of damages are inadequate. Following the ruling in *Shriram General Insurance Co Ltd v. Usha*, MAC.APP.No.160/2015, decided on 05.05.2016, compensation in the sum of Rs.1,50,000/- towards loss of love and affection and Rs.50,000/- each towards loss to estate and funeral expenses are granted.

9. Thus, the total compensation on account of death of Santosh Kumar Tiwari would be [Rs.5,36,000/- + Rs.1,50,000/- + Rs.50,000/- + Rs.50,000/-] Rs.7,86,000/- (Rupees Seven lakh and eighty six thousand).

10. The award is modified accordingly. It shall carry interest as levied by the tribunal.

11. By order dated 21.05.2013, the insurance company had been directed to deposit the entire awarded amount with upto date interest

with the Registrar General and from out of such deposit, 80% was allowed to be released. It is clear that the amount in excess of the amount awardable has been released to the claimants. The insurance company would have the liberty to recover the same by initiating appropriate proceedings. The balance lying in deposit shall be refunded to the insurance company.

12. The statutory deposit shall also be refunded to the insurance company.

13. The appeal is disposed of in above terms.

OCTOBER 12, 2017

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R.K.GAUBA, J.



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