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

Decided on: 31st August, 2017

\+ MAC.APP. 641/2009

ICICI LOMBARD GENERAL INS. CO. LTD...... Appellant
Through: Mr. Pankaj Gupta for Ms. Suman Bagga, Adv.

Versus

MAYA DEVI & ORS ..... Respondents
Through: None.

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

JUDGMENT (ORAL)

1. The insurance company on which the liability to pay compensation, has been fastened by the impugned judgment dated 01.10.2009 on the claim petition (Petition no. 266/2008) instituted by first to third respondents (collectively, the claimants), awarding compensation in the sum of Rs. 7,92,000/-, is in appeal questioning the loss of dependency, by inclusion of the factor of future prospects pointing out that the claimants had failed to prove nature of employment or the earnings of the deceased and, thus, the tribunal was constrained to go by the minimum wages (Rs. 3,633/-), payable to an unskilled workman, on the relevant date of accident i.e. on 05.06.2008.

2. 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.

3. 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.

4. In the above view, while the objection to the inclusion of future prospects is correct, it is noted that the loss of dependency (worked out without such factor) would be in the sum of Rs. (3633 x 2 ÷ 3 x 12 x 17) Rs. 4,94,088/-. At the same time, it is also noted that the tribunal has granted very meager amounts under the non-pecuniary heads of damages, it being in the sum of Rs. 10,000/- towards loss of consortium, Rs. 30,000/- towards loss of love & affection and Rs.

5,000/- each towards funeral expenses and loss to estate. If appropriate awards in accord with the rulings in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshmamma* (2015) 9 SCC 150 for loss of love & affection, loss of consortium, loss of estate and funeral expense were to be added, there is not much difference in the amount determined by the tribunal and the award that should have been passed. This Court, therefore, declines to interfere. The appeal is dismissed.

5. By order dated 23.12.2009, the insurance company had been directed to deposit the entire awarded amount with interest with the UCO Bank, Delhi High Court Branch, which were to be kept in fixed deposit. By subsequent order dated 20.04.2010, seventy five per cent (75%) of the said amount was allowed to be released to the claimants. The balance shall also now be paid to the claimants in terms of the impugned judgment.

6. The statutory amount shall be refunded.

R.K.GAUBA, J.

AUGUST 31, 2017
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