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

Decided on: 25th September, 2017

\+ MAC.APP. 687/2016 and CM 35191/2017

THE NEW INDIA ASSURANCE CO LTD ..... Appellant
Through: Mr. Pankaj Seth, Advocate

versus

SURENDRA BHATI & ORS ..... Respondents
Through: Mr. Jatinder Kamra, Adv. for R-1 to 3

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

JUDGMENT (ORAL)

1. Mithlesh Bhati, a house wife, aged about 37 years old, died on account of the injuries suffered in a motor vehicular accident that occurred on 25.10.2014, it involving negligent driving of a car bearing registration no.DL-1Y-D-9477, admittedly insured against third party risk with the appellant insurance company. On the accident claim case (suit no.44/2015) filed by the first to third respondents (collectively, the claimants) the Motor Accident Claims Tribunal (Tribunal) held inquiry and, by judgment dated 16.07.2016, awarded total compensation in the sum of Rs.23,71,950/- directing the insurance company to pay with interest at the rate of 9% p.a. it inclusive of Rs.1,00,000/- each towards loss of love and affection and loss of

consortium and Rs.25,000/- towards funeral expenses, the balance on account of loss of dependency.

2. The insurer by the appeal at hand has questioned the calculation of loss of dependency on the ground that the tribunal assuming the income with the help of minimum wages (Rs.9,542/- p.m.) while applying the multiplier of 15, wrongly added the element of future prospects of increase in income to the extent of 25% and failed to make any deduction towards personal and living expenses.

3. The appeal was put in the list of 'regulars' as per order dated 28.11.2016. The claimants have come up with application (CM 35191/2017) for release of the part of the amount which was to be put in fixed deposit receipt submitting it was required urgently. The learned counsel for the claimants, however, also submitted that since the issues are limited, he is ready to argue on the main appeal. With the consent of the learned counsel for the appellant, the matter has been taken up and the appeal has been heard. The application for pre-mature release, not being pressed at this stage, stands disposed of.

4. 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.

5. 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.

6. Since there was no clear proof of engagement of the deceased in a regular employment much less of any progressive rise in income, the element of future prospects of increase has to be kept out. Following the decision of this court in *Reliance General Insurance Co. Ltd. Vs. Murgan and Ors., MACA 1177/2014, decided on 25.02.2016*, one-third had to be deducted towards personal and living expenses even in the case of loss of dependency of the house wife.

7. Thus, the loss of dependency is recomputed as [Rs.9,542/- x 2 / 3 x 12 x 15] Rs.11,45,040/-, rounded off to Rs.11,46,000/- (Rupees Eleven lakh and forty six thousand only).

8. Having regard to the date of the accident, following the ruling in *Shriram General Insurance Co Ltd v. Usha, MACA 160/2015*, decided on 05.05.2016, the non-pecuniary damages under the heads of loss of love and affection and loss of consortium are increased to

Rs.1,50,000/- each and that for funeral expenses is increased to Rs.50,000/-.

9. Thus, the total compensation in the case comes to [Rs.11,46,000/ + Rs.1,50,000/- + Rs.1,50,000/- + Rs.50,000/-] Rs.14,96,000/- (Rupees Fourteen Lakh and ninety six thousand only). The award is modified accordingly. The interim compensation shall have to be adjusted. It shall carry interest as levied by the tribunal.

10. The insurer had been directed by order dated 30.08.2016 to deposit Rs.18,00,000/- with up-to-date interest at the rate of 9% p.a. No amount out of such deposit has been released till date. It is noted that the tribunal had apportioned the compensation by specifying the amount in favour of the different claimants. Having regard to the fact that the award has been reduced, it is directed that 60% shall be paid to the first respondent (husband) and the balance will be equally divided amongst the remaining claimants.

11. The Registry shall calculate the amount payable to the claimants in terms of the modified award and release the same from out of above mentioned deposit refunding the excess to the insurance company with the statutory deposit.

12. The appeal is disposed of in above terms.

R.K.GAUBA, J.

SEPTEMBER 25, 2017
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