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

Decided on: 25th August, 2017

+ **MAC APPEAL No. 546/2015 & CM No. 23876/2017**

GIASI RAM & ANR. Appellants
Through: Ms. Isha Khanna, Adv.

versus

ICICI LOMBARD GENERAL INS. CO. LTD. & ORS. Respondents
Through: Mr. A.K. Soni Adv. for R-1.
Mr. Anil Grover, AAG with
Mr. Mishal Vij, Adv. for
Harayana Roadways.

+ **MAC APPEAL No. 1148/2014**

ICICI LOMBARD GENERAL INS. CO. LTD.Appellant
Through: Mr. A.K. Soni Adv. for R-1.

Versus

GIASI RAM & ANR. Respondents
Through: Ms. Isha Khanna, Adv. for R-1
& 2.

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

JUDGMENT (ORAL)

1. Both these appeals were put in the list of 'regulars' as per order dated 23.02.2016. On the application (CM No. 23876/2017) moved by the claimants seeking early hearing, these appeals have been taken

up, the request of early hearing being not opposed. With the consent of counsel on both sides, the appeals have been heard together.

2. Dinesh Kaushik, then about 23 years, was riding a motorcycle, bearing no. DL4SAJ 4800 with one Raju as pillion rider, on 17.09.2008, when it came to be involved in a collision with Haryana Roadways bus bearing registration no. HR 38H 7438, resulting in injuries, which proved fatal. He was a bachelor and survived by his parents (appellant in MAC Appeal no. 546/2015). It appears inspite of the fatal collision, the local police of Tehsil Ballabhgarh, District Faridabad did not register a case immediately. The parents of the deceased, on some belated advice, instituted accident claim case (petition no. 75/2011) on 17.03.2011 impleading, besides the driver and owner of the bus, its insurer, it now being appellant in MAC Appeal no. 1148/2014.

3. The claim case was put to inquiry and, by judgment dated 08.08.2014, the case of accident having occurred due to negligence of bus driver was upheld. The tribunal awarded compensation in the sum of Rs. 7,31,700/- and directed the insurer to pay the same with interest @ nine per cent (9%) per annum, the said amount inclusive of Rs. 5,96,700/- towards loss of dependency, Rs. 1 lakh towards loss of love & affection, Rs. 25,000/- towards funeral expenses and Rs. 10,000/- towards loss to estate. The loss of dependency was calculated on the income of Rs. 3,683/-, it being the minimum wages of an unskilled person on the relevant date, on which future prospects of increase

were added and multiplier of 18 applied, this on the basis of age of the deceased.

4. The insurance company filed appeal (MAC appeal no. 1148/2014) questioning the computation of the loss of dependency submitting that the multiplier should have been picked up according to the age of the claimant mother and that the element of future prospects of increase could not have been factored in. The insurance company also raised the issue of contributory negligence on the ground the deceased had partaken liquor and would have contributed to the accident.

5. *Per contra*, the claimant by their appeal (MAC Appeal no. 546/2015) have submitted that they had proved through the evidence of the first appellant (PW-1) that the deceased was earning Rs. 10,000/- per month as a tutor which should have been accepted. They also submit that the non-pecuniary damages awarded by the tribunal are inadequate.

6. The plea of the insurance company about contributory negligence is without merit and must be rejected. Noticeably, in its written statement, no such defence was taken. Though it was put to the claimant's witnesses that the deceased had taken liquor at the time of the accident, no evidence affirming such to be the case was adduced.

7. The contention of the claimants about earning Rs. 10,000/- as a tutor cannot be accepted and has been rightly rejected by the tribunal.

There was no formal proof of any such income. The educational qualifications of the deceased were not even indicated. It was not explained as to what kind of tutorial classes the deceased was taken. With the appeal, some further proof has been adduced (annexure A-3) to show that the deceased was a budding cricketer, he playing well in local tournaments, his competence as a good cricketer with lot of promise in future having come to notice due to his excellent performance, this having become subject matter of wide media coverage as well. In these circumstances, it would be unfair to treat him as equivalent to an unskilled worker. Therefore, his income is assumed equivalent to the minimum wages of skilled worker at Rs. 4,107/-.

8. 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.

9. 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.

10. Since the income has been assumed on the basis of the minimum wages, there being no clear proof of progressive rise, no future prospects can be added.

11. On the issue of choice of the multiplier in the case of death of a bachelor, this Court in case titled *Reliance General Insurance Company Limited vs. Gomti & Ors.*, MAC APP.467/2016, decided on 24th August, 2017, has observed as under:-

“6. The question as to the choice of multiplier in cases of deaths 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”.”

12. The choice of multiplier will have to be according to the age of the deceased or that of the claimants, whichever is higher.

13. The learned counsel for the claimants has placed on record, during the hearing, copy of the Aadhar Card of the first claimant Urmila Devi, mother, indicating her date of birth to be 01.01.1950. This would mean she was 58 years on the relevant date. It implies that the calculation of loss of dependency has to be on the multiplier of 9.

14. Thus, calculation of loss of dependency in the case comes to $(4107 \div 2 \times 12 \times 9)$ Rs. 2,21,778/-, rounded off to Rs. 2,22,000/- (Rupees Two Lakhs Twenty Two Thousand only). The non-pecuniary damages under the heads of funeral expenses and loss of love & affection as awarded by the tribunal are appropriate. In view of the rulings in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshamma* (2015) 9 SCC 150, however, the award of Rs. 10,000/- only, towards loss to estate is found deficient and so increased to Rs. 25,000/-. The total compensation in the case,

thus, comes to Rs. (2,22,000 + 1,00,000 + 25,000 + 25,000) Rs. 3,72,000/- (Rupees Three Lakhs Seventy Two Thousand only). The award is modified accordingly. It shall carry interest as levied by the tribunal.

15. By order dated 19.12.014 on MAC appeal no. 1148/2014, the insurance company had been directed to deposit the entire awarded amount with the Registrar General of this Court and out of such deposit, Rs. 2,00,000/- (Rupees Two lakhs) was released to the claimants, the balance having been kept in fixed deposit. The registry shall now release the balance to the claimants in terms of the modified award, refunding the excess with statutory deposit to the insurance company.

16. Both appeals are disposed of in above terms.

AUGUST 25, 2017
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R.K.GAUBA, J.

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