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

*Decided on: 25<sup>th</sup> September, 2017*

+ MAC.APP. 887/2016 and CM 35300/2017

**THE ORIENTAL INSURANCE COMPANY LIMITED**

.....Appellant

Through: Mr. Amit Gaur, Advocate

versus

**CHOKHE & ORS.**

..... Respondents

Through: Mr. Kanhi Lal, Advocate for  
R-1 & R-2.

Mr. Paritosh, Advocate for R-3.

**CORAM:**

**HON'BLE MR. JUSTICE R.K.GAUBA**

**JUDGMENT (ORAL)**

1. Uday, a bachelor, aged about 20 years, suffered injuries in a motor vehicular accident that occurred on 22.10.2010, on being hit by motorcycle bearing registration No.DL-5SAE-0301, driven negligently by the third respondent, it being registered in the name of the fourth respondent and admittedly insured against third party risk with the appellant insurance company for the period in question, and died in the consequence. His parents, first and second respondents (collectively, the claimants) instituted accident claim case (MACT No.357/2010, New No.14936/2015) on 23.11.2010 seeking compensation. The tribunal held inquiry and, by judgment dated 25.07.2016, awarded compensation in the total sum of Rs.9,45,000/-,

directing the insurer to pay, though granting it recovery rights against the driver and owner of the motorcycle, they being third and fourth respondents respectively on the ground that the third respondent was not holding a valid or effective driving licence, he also being a juvenile who could not have obtained such licence.

2. The insurer by the appeal at hand submits that the award of compensation inclusive of Rs.8,10,000/- on account of loss of dependency is erroneously computed, as element of future prospects of increase to the extent of 50% has been added and the multiplier of 18 has been invoked, ignoring the fact that the age of the claimant parents is higher.

3. On the appeal of the insurance company, notices have been issued to the driver and owner of the offending vehicle, they being third and fourth respondents respectively. It appears the fourth respondent could not be served by ordinary mode and, therefore, substituted service has been resorted to. The amount of compensation awarded by the tribunal, however, has been put in fixed deposit receipt in terms of interim order dated 26.10.2016, no part thereof having yet reached the hands of the claimants (first and second respondents). The claimants have come up with application (CM APPL.35300/2017) for release of the said amount. On being asked, the counsel for the claimants submitted that he is ready to argue on the main appeal.

4. Having regard to the fact that the recovery rights have already been granted by the tribunal in favour of the insurance company against the third and fourth respondents, for the reasons set out

hereinafter, there is no need to secure the presence of such other parties. It may be mentioned that the third respondent, however, is present through counsel. The date fixed (26.10.2017) for the matter to be taken up by the Registrar is cancelled. Hearing on the appeal is advanced with the consent of all sides.

5. 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.

6. 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. Lalita 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.

7. There was no clear proof mustered before the tribunal as to the nature of avocation in which the deceased was engaged much less of progressive rise in income. In these circumstances, the element of future prospects could and should not have been added.

8. 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 24<sup>th</sup> 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 18<sup>th</sup> 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”.*”

9. Since the evidence would show that the age of the mother on the relevant date was 38 years, the multiplier of 15 only could have been applied.

10. The accident had occurred on 22.10.2010 when the minimum wages of unskilled worker were in the sum of Rs.5278/- per month. Making a deduction of 50% towards personal and living expenses, and applying the multiplier of 15, the loss of dependency is re-calculated as  $(5278/- \div 2 \times 12 \times 15)$  Rs.4,75,020/- rounded off to Rs.4,76,000/-.

11. It is noted that the award under the non-pecuniary heads of damages granted by the tribunal is on the lower side. Following the view taken in MAC.APP.No.160/2015 *Shriram General Insurance Co Ltd v. Usha* decided by this court on 05.05.2016, amount of Rs.1,50,000/- is granted towards loss of love & affection, besides Rs.50,000/- each towards loss of estate and funeral expense.

12. Hence, the total compensation payable in the case comes to  $(4,76,000/- + 1,50,000/- + 50,000/- + 50,000/-)$  Rs.7,26,000/- (Rupees Seven Lakh Twenty Six Thousand Only).

13. The award is modified accordingly, it shall carry interest as levied by the tribunal.

14. Since the insurance company has already been granted recovery rights, the plea for total exoneration is unjustified and thus repelled.

15. By order dated 25.10.2016, the insurer had been directed to deposit the entire awarded amount with upto date interest which was kept in fixed deposit receipt in UCO Bank, Delhi High Court Branch. The registry shall now release the requisite amounts to the claimants in terms of the modification ordered above, refunding the excess in deposit to the insurance company with statutory deposit.

16. The appeal along with accompanying application stands disposed of in above terms.

**SEPTEMBER 25, 2017**

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**R.K.GAUBA, J.**