$~R-88 & 89

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

Decided on: 25th July, 2017

\+ MAC.APP. 405/2009

RELIANCE GENERAL INSURANCE CO. LTD. ... Appellant

Through: None

versus

RACHNA DEVI & ORS. ..... Respondents

Through: None

\+ MAC.APP. 1017/2016

RACHNA DEVI & ORS. ..... Appellant

Through: None

versus

RELIANCE GENERAL INSURANCE CO. LTD ….. Respondent

Through: None

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

JUDGMENT (ORAL)

1. Bhushan Kumar, aged 24 years, a matriculate, suffered injuries in a motor vehicular accident that occurred on 07.05.2007 due to negligent driving of a truck bearing registration no.HR-67-7311, admittedly insured against third party risk for the period in question

with Reliance General Insurance Co. Ltd. (appellant in MACA 405/2009). His wife, two children and father, they being the appellants in MACA 1017/2016 (hereinafter the claimants), instituted accident claim case (suit no.1633/07) on 29.10.2007, seeking compensation on the averments that the said truck had been driven in rash manner by Jagbir Singh, respondent in these appeals, the truck being registered in the name of Kishan Lal, another respondent in these appeals.

2. The Motor Accident Claims Tribunal (Tribunal) held inquiry and, by judgment dated 25.03.2009, accepted the claim on the principle of fault liability. The findings on facts returned thereby have attained finality as the same were not challenged.

3. The tribunal, by the impugned judgment, awarded compensation in the total sum of Rs.8,24,272/- with interest at the rate of 7.5% p.a., the said amount inclusive of Rs.7,99,272/- towards loss of dependency and Rs.25,000/- towards funeral expenses and loss of love and affection.

4. The insurer filed the first captioned appeal (MACA 405/2009) on the contentions that the dependency loss was wrongly worked out. During the course of the said appeal, the claimants came with cross objections (CM 15081/2009) which were registered as an independent appeal (MACA 1017/2016). By the said cross appeal, it has been submitted that the award is inadequate.

5. These appeals were put in the category of 'regulars' as per order dated 28.11.2016. They came up for hearing on 07.12.2016 but neither side appeared. On being called out again from the category of 'regulars', there is no appearance either on behalf of the insurer or the claimants. The cause list for the list of cases for regulars has been carrying a note that no adjournment would be granted in the first ten cases, the case at hand falling within the said zone. Having regard to the old pendency, there is no reason why the consideration of these appeals should be deferred yet again. This court, however, must record its disapproval at the lack of assistance, particularly on the part of the insurance company.

6. On perusal, this court finds some errors in the calculation of the loss of dependency in the impugned judgment. At the same time, the grievance of the claimants in their appeal about inadequacy of the non- pecuniary damages must also be accepted.

7. The claimants were unable to bring home any cogent or clear evidence as to the source of earnings. The tribunal, therefore, was constrained to go by the minimum wages. It does appear that the claimants had relied upon income tax return (ITR) of the deceased for the assessment year 2006-2007 corresponding to the financial year 2005-2006, submitted on 09.02.2007. The said ITR (at page 141 of the Tribunal's record) would, however, show the entire declared income of Rs.84,000/- to be from house property. There was no income shown accruing from any business or profession. The said ITR obviously could not assist the claimants in proving the income

since income from house property would have continued even after the death. In these circumstances, the tribunal was correct in assuming the income at Rs.3,918/-, it being the minimum wages payable to a matriculate.

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. The tribunal went wrong in adding the element of future prospects in the absence of any proof of regular engagement in business, profession or other engagement for gain. In working out the loss of dependency, it made a deduction of one-third towards personal and living expenses. This was not correct in view of the ruling in *Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr.,* (2009) 6 SCC 121. There being four defendants such deduction should have been made to the extent of one-fourth. Further error committed by the tribunal is in choosing the multiplier of 17. Since the deceased was 24 years old, it is the multiplier of 18 which should have been adopted.

11. Thus, loss of dependency is recomputed as (Rs.3,918/- x 3 / 4 x 12 x 18) Rs.6,34,716/-, rounded off to Rs.6,35,000/-.

12. The award for non-pecuniary damages in the composite sum of Rs.25,000/- on account of loss of love and affection and funeral expenses was highly deficient. Following the rulings in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshmamma* (2015) 9 SCC 150, the award of Rs.1 Lakh each towards loss of love and affection and loss of consortium and Rs.25,000/- each towards loss to estate and funeral expenses are added. Thus, the total compensation comes to (Rs.6,35,000/- + Rs.1,00,000/- + Rs.1,00,000/- + Rs.25,000/- + Rs.25,000/-) Rs.8,85,000/-.

13. It is noticed that the rate of interest levied at 7.5% was on the lower side. Following the consistent view taken by this Court, the rate of interest is increased to 9% per annum from the date of filing of the petition till realization. [see judgment dated 22.02.2016 in MAC.APP. 165/2011 *Oriental Insurance Co Ltd v. Sangeeta Devi & Ors*.].

14. The award is modified accordingly.

15. The tribunal had apportioned the award by specifying the amounts falling to the shares of respective claimants. By order dated 26.08.2009 on MACA 405/2009, insurer had been directed to deposit the entire awarded amount with interest with UCO Bank, Delhi High Court Branch, New Delhi. By order dated 27.10.2009, some portion of the said award was allowed to be released, the balance directed to be kept in fixed deposit receipts.

16. It is directed that the entire enhanced portion of the award, alongwith the effect of the increase in the rate of interest, shall fall exclusively to the share of the first claimant / Rachna Devi, it being released to her in the form of fixed deposit receipt for a period of three years. The balance lying in deposit shall also be released to the respective claimants.

17. Bearing in mind the lack of assistance by the appellant / insurance company, cost of Rs.50,000/- is imposed which shall be paid by requisite deposit with Delhi High Court Legal Services

Authority within two weeks of this judgment. The statutory deposit stands forfeited.

18. The captioned appeals are disposed of in above terms.

(R.K.GAUBA, J.)

JULY 25, 2017
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