

\$~5

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

Decided on: 7th September, 2017

+ **MAC APPEAL No. 660/2015**

THE NEW INDIA ASSURANCE CO. LTD. Appellant
Through: **Ms. Awantika Manohar, Adv.**

versus

LAKSHMI DEVI & ORS. Respondents
Through: **Mr. Arun Srivastava, Adv. for**
R-1 to 3.
Mr. P.K. Srivastava, Adv. for
R-8.

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

JUDGMENT (ORAL)

1. Jitender Singh @ Jitender Kumar, 22 and half years old, died as a result of injuries suffered in motor vehicular accident that occurred on 03.01.2012 at about 9:30 PM due to negligent driving of Maruti van bearing registration no. DL 7CB 1709, admittedly insured against third party risk with the appellant insurance company. His wife and other members of the family dependent upon him, they being first to third respondents (collectively, the claimants), instituted accident claim case (case no. 89/2012) on 30.01.2012 seeking compensation. In the claim proceedings besides Vineet @ Mantu, the driver of the offending vehicle, two persons were shown in the fray as the owner (they being Satpal in whose name the car is registered and Subh Ram)

besides the appellant as the insurer. In addition, Bimlesh Devi @ Vimlesh Devi described as the person who statedly had purchased the car from the registered owner was also impleaded as the sixth respondent before the tribunal. It may be added that Manu Devi described as step mother of the deceased was also impleaded as proforma respondent no.5 before the tribunal.

2. The tribunal, after inquiry, by judgment dated 20.04.2015, upheld the claim for compensation on the basis of finding that the car driver was negligent. The tribunal computed the compensation in the sum of Rs. 22,06,216/- and directed the insurer to pay with interest @ nine per cent (9%) per annum.

3. The insurer, by the appeal at hand, questions the computation of compensation on the ground that the factor of future prospects of increase was wrongly added, the income of the deceased having been calculated on the basis of minimum wages of a skilled worker (Rs.8,112). It also submits that since it had been pleaded by Satpal, registered owner of the car (fifth respondent herein) that he had sold the car to Bimlesh Devi @ Vimlesh Devi (eighth respondent herein) in 2011, the insurer has no liability to indemnify. Reference is also made at the same time to the pleadings of eighth respondent before the tribunal denying such purchase to the effect that the car was owned by Satpal (fifth respondent) and Subhram (sixth respondent).

4. The plea of the insurance company for exoneration only on the basis of pleadings to above effect by the registered owner regarding sale of the car in 2011 to a third person cannot be accepted. No evidence was led to affirm the said transaction of sale. The car

continues to be registered in the name of the same person and, thus, the insurance company cannot seek exoneration.

5. The other contention about the compensation, however, deserves to be accepted.

6. 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.

7. 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.

8. Though it was claimed that the deceased was employed as Tractor driver, the said fact was not proved by any evidence. In absence of any clear proof of employment and/or its terms, the element of future prospects has to be kept out. The tribunal wrongly referred to multiplier of 17 but actually applied the multiplier of 18 and, rightly so. The loss of dependency is, thus, calculated as $(8112 \times 3 \div 4 \times 12 \times 18)$ Rs. 13,14,144/-, rounded off to Rs. 13,15,000/-.

9. It is however, noted that the tribunal has awarded Rs. 1,00,000/- each towards loss of consortium and loss of care and guidance, in addition to Rs. 25,000/- towards funeral expenses and Rs. 10,000/- towards loss of estate. Following the dispensation in MAC.APP.No.160/2015 *Shriram General Insurance Co Ltd v. Usha* decided by this court on 05.05.2016, non-pecuniary damages in the sum of Rs. 1,50,000/- each is granted towards loss of love & affection and towards loss of consortium and Rs. 50,000/- each towards loss of estate and funeral expense.

10. Hence, the total compensation payable in the case comes to $(13,15,000 + 1,50,000 + 1,50,000 + 50,000 + 50,000)$ Rs. 17,15,000/- (Rupees seventeen lakhs fifteen thousand only). The award is modified accordingly. It shall carry interest as levied by the tribunal. The apportionment of the award as determined by the tribunal would remain undisturbed.

11. By order dated 19.08.2015, the insurance company had been directed to deposit the entire awarded amount with the Registrar General within the period specified and from out of such amount fifty

per cent (50%) was allowed to be released, the balance kept in fixed deposit.

12. The registry shall now calculate the balance payable to the respective claimants in terms of the modified award and release the same from the balance retained, refunding the excess with corresponding interest to the appellant insurance company.

13. The statutory amount shall be refunded.

R.K.GAUBA, J.

SEPTEMBER 07,2017

nk

