

\$~R-315 & 316

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

Decided on: 11th October, 2017

+ MAC APPEAL No. 293/2011

NATIONAL INSURANCE CO. LTD. Appellant
Through: Mr. Shoumik Mazumdar, Adv.

versus

VEENA VERMA & ORS. Respondents
Through: Mr. Anshuman Bal, Adv.

+ MAC APPEAL No. 872/2017

VEENA VERMA & ORS. Appellants
Through: Mr. Anshuman Bal, Adv.

versus

NATIONAL INS. CO. LTD. & ORS. Respondents
Through: Mr. Shoumik Mazumdar, Adv.
for R-1.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Manmohan Verma, aged 48 years, earning his livelihood from a private business, died on account of injuries suffered in motor vehicular accident that occurred on 25.09.2008 involving negligent driving of motor vehicle described as truck trolly bearing registration no. HR 55B 9425, admittedly insured against third party risk with National Insurance Company Ltd. (appellant in MAC appeal no.

293/2011). His wife and other members of family dependent on the deceased, they being appellants in MAC Appeal No. 872/2017 instituted accident claim case (MACT 412/09/08) on 04.10.2008. It may be mentioned here that the original claimants included Smt. Krishna Verma, mother of the deceased who having expired during the pendency of the hearing on 03.12.2009, her name later stood deleted. The Tribunal after inquiry, by judgment dated 24.11.2010, granted compensation in the sum of Rs. 16,25,000/-, the liability to pay having been fastened on the insurer though it having been granted recovery rights against the driver and owner of the offending vehicle, they being the other respondents in these appeals. The amount of compensation, thus computed and awarded, included Rs. 15,89,887/- towards loss of dependency, Rs.10,000/- each towards loss of love & affection, loss of consortium and loss to estate and Rs. 5,000/- towards funeral expenses.

2. Both the insurer and claimants have come up in appeal questioning the computation of compensation. It is the argument of the insurer that the element of future prospects of increase was wrongly added. On the other hand, the claimants submit that the income-tax return (ITR) for the assessment year 2008-09 as proved by document (Ex.PW-1/4) showed the gross total income to be Rs. 1,56,710/-. It is their submission that the Tribunal fell into error by taking the net income as the basis for calculation, the deductions being on account of permissible savings. The claimants also submit that the

non-pecuniary damages awarded and the rate of interest levied by the Tribunal are inadequate.

3. 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.

4. 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.

5. The ITR for AY-2008-09 (Ex.PW-1/4) was the only evidence reflecting the income of the deceased. Indeed, there is no proof of any

regular earnings much less of the progressive rise in income. In these circumstances, the element of future prospects of increase has to be kept out. At the same time, the submissions of the claimants that the gross income should have been the benchmark must be accepted.

6. The loss of dependency is thus, recomputed as $(1,56,710 \times 3 \div 4 \times 13)$ Rs. 1,527,922.5, rounded off to Rs. 15,28,000/-.

7. Following the rulings in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshamma* (2015) 9 SCC 150, compensation in the sum of Rs. 1,00,000/- each on account of loss of love & affection and loss of consortium and Rs. 25,000/- each towards loss of estate and funeral expense are added.

8. Thus, the total compensation payable in the case is computed as $(15,28,000 + 1,00,000 + 1,00,000 + 25,000 + 25,000)$ Rs. 17,78,000/- (Rupees seventeen lacs and seventy eight thousand only).

9. The compensation is increased accordingly. Following the consistent view taken by this Court, the rate of interest is increased to 9% (nine per cent) 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.*]

10. The insurance company had been directed by order dated 01.04.2011 to deposit the entire awarded amount within the period specified and from out of such deposit 50% was allowed to be released to the claimants. It is noted that the tribunal had specified the amounts falling to the share of each claimant. Since the award has been

modified, it is directed that the balance lying in such deposit to be released and the entire enhanced portion of the award including on account of change of rate of interest shall fall exclusively to the share Veena Verma (widow), the first appellant in MAC Appeal No. 872/2017, for it to be released to her in the form of interest bearing fixed deposit receipt for a period of seven years with right to draw periodic interest.

11. It is clarified that the above modification shall not affect the recovery rights granted to the insurer.

12. The statutory amount deposited by the insurer shall be refunded after proof is shown of the award having been satisfied.

13. The appeals stands disposed of.

OCTOBER 11, 2017
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R.K.GAUBA, J.