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

Decided on: 13th July, 2017

+ MAC.APP. 745/2015 and CM No. 21609/2015

UNITED INDIA INSURANCE CO LTD Appellant

Through: Mr. Amit Gaur for Mr. Pradeep
Gaur, Advocate

versus

KOMAL DEVI & ORS Respondents

Through: Mr. Anshuman Bal, Advocate for
R-1 to R-4

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

JUDGMENT (ORAL)

1. Rajesh Kumar, aged 25 years, died in a motor vehicular accident that occurred on 08.11.2013, the accident having been caused by a bus bearing no.DL-1PB-1058, admittedly insured against third party risk with the appellant / insurance company.
2. On accident claim case (MACP 509/14), instituted by the first to fourth respondents (collectively the claimants), the Tribunal awarded compensation in the sum of Rs.24,52,376/- which includes loss of dependency calculated at Rs.20,27,376/-. It is the said

component, the correctness of which calculation is challenged by the insurance company in appeal, its only contention urged at the hearing being that the element of future prospects of increase to the extent of 50% was wrongly added against the assumed income based on minimum wages for matriculates there being no documentary evidence of actual earnings.

3. *Per contra*, the claimants through counsel pointed out that deduction to the extent of one-third on account of personal and living expenses was incorrect as there are four claimants.

4. 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.

5. 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 12.1.2015, 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.

6. Indeed, no formal evidence as to the actual engagement of the deceased in a gainful employment was adduced. The Tribunal was thus constrained to go by the minimum wages. In absence of any formal proof of regular employment or progressive rise in income the element of future prospects could not have been added.

7. At the same time, however, the dictum in *Sarla Verma (Smt.) & Ors. vs. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121, have to be kept in mind while deducting personal and living expenses. For four claimants, deduction will have to be to the extent of one-fourth.

8. The loss of dependency is, thus, recalculated as (Rs.9386 x 3/4 x 12 x 18) Rs.15,20,532/-, rounded off to Rs.15,21,000/-. Adding the other components of compensation which are in the sum of Rs.4,25,000/-, the total compensation comes to (Rs.15,21,000/- + Rs.4,25,000/-) Rs.19,46,000/-.

9. The compensation is reduced to Rs.19,46,000/- though it shall carry interest at the rate of 9% p.a. as levied by the Tribunal.

10. The insurance company had been directed by order dated 29.09.2015 to deposit the awarded amount with the Registrar General of this Court and from such deposit, 50% was allowed to be released in terms of the impugned award, remaining kept in interest bearing fixed deposit for a period of one year with UCO Bank, Delhi High

Court Branch, New Delhi.

11. The Tribunal had apportioned Rs.8 Lakh in favour of the second claimant (minor son) / Dhruv Kumar. It is also noted that the Tribunal had released Rs.2 Lakh in favour of the third claimant (father) Prabhu Narayan and, an amount of Rs.2,52,376/- in favour of the fourth claimant (mother) Asha Devi. Since the compensation has been rounded off, the share of the mother is determined at Rs.2,46,000/-. The father would have received 50% of share in terms of the interim order referred to above. After his balance has been paid, the entire balance from the modified award shall go to the first claimant (widow) Komal Devi with proportionate interest.

12. The Registry shall release the balance in terms of the modified award to the respective claimants refunding the excess to the insurance company.

13. The statutory amount shall be refunded.

14. The appeal and the pending application are disposed of in above terms.

R.K.GAUBA, J.

JULY 13, 2017

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