$~3 & 4 *(common order)*

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

Decided on: 9th August, 2017

\+ MAC.APP. 769/2015 and CM APPL.22782/2015

NATIONAL INSURANCE CO LTD ..... Appellant

Through: Mr. Pankaj Seth, Advocate

versus

MOMINA & ORS ..... Respondents

Through: Mr. M.K. Sharma, Adv. for R-1 to R-4.
Mr. Ratish Kumar Sharma, Advocate with Mr. J.K. Srivastava, Adv. for R-6.

\+ MAC.APP. 773/2015 and CM APPL.22950/2015, CM APPL.30396/2015

NATIONAL INSURANCE CO LTD ..... Appellant

Through: Mr. Pankaj Seth, Advocate

versus

KHURSED @ JINDA HASAN & ORS ..... Respondents

Through: Mr. M.K. Sharma, Adv. for R-1
Mr. Ratish Kumar Sharma, Advocate with Mr. J.K. Srivastava, Adv. for R-3.

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

JUDGMENT (ORAL)

1. Mahboob, husband of the first respondent in MAC APP.769/2015 with his relative Khursed @ Jinda Hasan, first respondent in MAC APP.773/2015 were going to Baghpat on motorcycle bearing registration No.DL-5S-AA-1604 (the motorcycle) on 16.08.2012 when, in the area of village Katha, Baghpat, U.P., they met with an accident on account of negligent driving of bus bearing registration No.PB-08-AN-6051 (the bus), admittedly insured against third party risk with the appellant (insurance company) of these two matters. Mahboob died in the consequence of the injuries suffered while Khursed @ Jinda Hasan suffered permanent disability, his functional disability having been assessed to the extent of twelve per cent (12%). The first respondent (in MAC APP.769/2015) with other family members dependent upon the deceased (Mahboob), they being first to fourth respondents (collectively, the claimants), filed accident claim case (MACT No.94/2013) seeking compensation, while injured Khursed @ Jinda Hasan filed his own accident claim case (MACT No.93/2013), each instituted on 23.03.2013, the appellant insurance company having been impleaded as the first respondent in both the cases, in addition to the owner and driver of the bus, they being respondents in these appeals.

2. On the basis of inquiries held, by similar judgments, each rendered on 11.08.2015, the tribunal accepted the claim cases for compensation on the principle of fault liability holding the bus driver negligent.

3. In the case of death, compensation in the sum of Rs.11,51,837/- was awarded with interest @ 9% per annum. In the case of injuries, the compensation in the sum of Rs.3,09,767/- was awarded with interest @ 9% per annum. The liability was fastened in both the cases on the appellant insurance company, which has come up in appeal questioning the computation.

4. In both the cases, the tribunal was constrained to assume the income with the help of minimum wages, there being no clear evidence as to the nature of avocation or earnings of the respective victims. The tribunal, however, thereafter added the element of future prospects of increase to the extent of fifty per cent (50%), in the death case to work out loss of dependency and in the other case to calculate the loss of future income due to permanent disability.

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. 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.

7. In these cases the element of future prospects of increase will have to be kept out from consideration and the loss of dependency in case of death and loss of future income due to disability will have to be worked out afresh.

8. In the case of death of Mahboob, noticeably, the tribunal adopted the minimum wages of Rs.4527,59 as the bench mark and applied the multiplier of 15 and made deduction of one-fourth (1/4th) towards personal and living expenses. The loss of dependency is, thus, re-computed as (4527.59 x 3/4 x 12 x 15) Rs.6,11,224.65 rounded off to Rs.6,12,000/-.

9. It is, however, noted that the non-pecuniary damages awarded at Rs.1 lac each towards loss of love and affection and loss of consortium, Rs.25,000/- towards funeral expenses and Rs.10,000/- on account of loss of estate are inadequate. Having regard to the fact that the accident had occurred on 16.08.2012, following the dispensation in

MAC.APP.No.160/2015 MAC.APP. 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 towards loss of love & affection and towards loss of consortium and Rs.50,000/- each towards loss of estate and funeral expense are added.

10. Thus, the total compensation payable in the case of death of Mahboob is computed as (6,12,000/- + 4,00,000/-) Rs.10,12,000/- which amount shall carry interest as levied by the tribunal. The award is modified accordingly, there being no change in the apportionment.

11. In the case of injuries suffered by Khursed @ Jinda Hasan, noticeably, the tribunal calculated his functional disability to be to the extent of twelve per cent (12%), the income having been assessed notionally at Rs.4527.59, the multiplier of 15 having been adopted, keeping in view his age. The loss of future income due to disability is, thus, re-computed as (4527.59 x 12/100 x 12 x 15) Rs.97,795.944 rounded off to Rs.98,000/-. Since the tribunal had awarded Rs.1,46,694/- under this head, the award would need to be reduced by (1,46,694/- (-) 98,000/-) Rs.48,694/-. Since the compensation was awarded at Rs.3,09,767/-, it is reduced to (3,09,767/- - 48,694/-) Rs.2,61,073/- rounded off to Rs.2,62,000/-. Needless to add, it shall carry interest as levied by the tribunal.

12. In terms of the interim orders in each of these appeals, the insurance company had deposited the entire awarded amounts as awarded by the tribunal, with interest, out of which fifty per cent (50%) was allowed to be released.

13. The registry shall re-calculate the balance amounts payable to the respective claimants in terms of the modification orders passed and release the same to them, refunding the excess to the appellant insurance company in each case with statutory deposit.

14. Both the appeals as well as pending applications stand disposed of in above terms.

R.K.GAUBA, J.

AUGUST 09, 2017
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