

\$~3

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

Decided on: 17th August, 2017

+ **MAC APPEAL No. 784/2015**

BAJAJ ALLIANZ GENERAL INSURANCE CO LTD

..... Appellant

Through: Mr. Pradeep Gaur, Adv.

versus

RAMAVTAR YADAV @ RAMOTAR YADAV & ORS

..... Respondents

Through: Mr. Rupender Singh, Adv. for
R-1 to R-4 (claimants)

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Mukesh, a bachelor, then 25 years old, working as helper at construction site at Shivaji Stadium, Delhi, suffered injuries at about 5.25 a.m. on 21.01.2010 on account of negligent driving of motor vehicle described as excavator bearing no.20085099E/NL13838/M by the fifth respondent, the said vehicle being registered in the name of the sixth respondent and insured for the relevant period with the appellant insurance company, and died in the consequence. His parents and two minor siblings, they being first to fourth respondents (collectively, the claimants), instituted accident clam case (MACP 193/2011) on 26.02.2010, which, after inquiry, was allowed by the tribunal, by judgment dated 23.07.2015, whereby award in the sum of

Rs. 10,26,000/- was granted with interest @ 9% per annum, the liability being fastened on the appellant insurance company, its plea about the policy not covering third party risk having been rejected.

2. By the appeal at hand, the insurance company reiterates the plea that the policy in question (Ex. R3W1/1) did not cover third party risk. It is noted that the insurance company while tendering the said document had relied upon certain additional documents incorporating terms and conditions which were attached to it, which, upon scrutiny, were found by the tribunal to be relating to some other policy. Since the terms and conditions which purport to show exclusion of third party risk related to some other insurance policy, the same cannot be relied upon. No such terms and conditions relevant to the insurance policy in question having been proved, the plea cannot be accepted.

3. The insurance company also questions the computation of loss of dependency pointing out that the tribunal has added the element of future prospects of increase in income and applied the multiplier of 18 on the basis of age of the deceased.

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. 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.

6. There was no formal proof of any regular employment of the deceased. In these circumstances, the element of future prospects of increase could not have been added.

7. In view of the binding precedents of Supreme Court in *G.M. Kerela SRTC vs Susamma Thomas* (1994) 2 SCC 176 and *U.P.S.R.T.C. vs Trilok Chandra* (1996) 4 SCC 362, as noted by this Court in *National Insurance Company Limited vs. Mohammed Siddique & Ors.*, MAC APP.431/2016, decided on 18th July, 2017, it is the age of the deceased or that of the claimants, whichever is higher, which form the basis of the multiplier to be adopted. The prime claim is on behalf of the parents of the deceased. The record of the tribunal shows copy of the ration card (Ex.PW-1/8) indicating the age of the mother at the relevant time was 50 years. In this view, the loss of dependency has to be calculated with the multiplier of 13.

8. Thus, the loss of dependency on the income of Rs.5,500/- as found by the tribunal is re-calculated, after deduction of 50% towards personal & living expenses in the sum of $[(5,500 \div 2) \times 12 \times 13]$ Rs.4,29,000/-.

9. It is noted that the accident had occurred on 21.01.2010. In view of 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/- towards loss of love & affection and Rs. 50,000/- each towards loss of estate and funeral expense are added. Hence, the total compensation payable in the case comes to (4,29,000/- +1,50,000/- + 50,000/- + 50,000/-) Rs. 6,79,000/-.

10. The award is modified accordingly. Needless to add, it shall carry interest as levied by the tribunal.

11. By order dated 14.10.2015, the insurance company had been directed to deposit the entire awarded amount with interest with the Registrar General and out of such deposit, fifty per cent (50%) was allowed to be released, the balance kept in interest bearing fixed deposit account. The registry shall now release the balance in terms of the modification ordered above, refunding the excess in deposit with corresponding interest to the insurance company.

12. The statutory amount shall also be refunded.

R.K.GAUBA, J.

AUGUST 17, 2017

nk