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

Decided on: 20th September, 2017

\+ MAC APPEAL No. 878/2015 and CM APPL.27262/2015

UPSRTC AND ANR. ..... Appellants

Through: Mr. Shadab Khan, Advocate for Ms. Garima Prashad, Advocate

versus

KAVITA & ORS. ..... Respondents

Through: Mr. S.N. Parashar, Advocate for R-1 to R-4.

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

JUDGMENT (ORAL)

1. Chetan Prakash died due to injuries suffered in a motor vehicular accident that took place on 20.08.2010 on account of negligence driving of bus bearing registration No. UP-81R-9240 of the appellants. The first to fourth respondents, they being the members of the family dependent on the deceased (collectively, the claimants) instituted accident claim case (Suit No.534/2010) on 12.10.2010 seeking compensation. The tribunal held inquiry and, by judgment dated 08.09.2015, returned finding that the accident and death had occurred due to negligent driving of bus.

2. The tribunal awarded compensation in the total sum of Rs.17,11,864/- and directed the appellant to pay with interest @ 9% per annum, calculating it thus:-

Sl.No.	Head	Amount in (Rs.)
1.	Loss of dependency	15,66,864/-
2.	Loss of love and affection	1,00,000/-
3.	Funeral Expenses	25,000/-
4.	Loss of consortium to petitioner no.1	10,000/-
5.	Loss of estate	10,000/-
	Total	17,11,864/-

3. While calculating the loss of dependency, the tribunal assumed the income notionally with the help of minimum wages (Rs.6448/- per month) and added 50% towards future prospects of increase and made deduction of one-fourth towards personal and living expenses, applying the multiplier of 18, noting that the deceased was 23 years old and had four persons claiming to be his dependents.

4. The appellants question the above computation on the ground that the fourth respondent, the father, could not have been treated as dependent and further that the element of future prospects was wrongly added.

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 12.01.2015, 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.

7. Indeed, in the absence of formal proof about the actual earnings of the deceased, the element of future prospects has to be kept out.

8. The other contention of the appellants, however, cannot be accepted as the evidence of the first respondent who appeared as PW-1 at the inquiry about the father also being dependent, since he was not working for gain, has gone unimpeached.

9. Thus, the loss of dependency is re-calculated as (6448/- x 3/4 x 12 x 18) Rs.10,44,576/-, rounded off to Rs.10,45,000/-.

10. It is pointed out by the counsel for the claimants that the non-pecuniary heads of damages are inadequate.

11. Following the view taken 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

towards loss of love & affection and towards loss of consortium and Rs.50,000/- each towards loss of estate and funeral expense are added. Thus, the total compensation payable in the case comes to (10,45,000/- + 1,50,000/- + 1,50,000/- + 50,000/- + 50,000/-) Rs.14,45,000/- (Rupees Fourteen Lakh Forty Five Thousand Only). Needless to add, the award shall carry interest as levied by the tribunal.

12. By order dated 18.11.2015, the appellants had been directed to deposit the entire awarded amount with the Register General of this Court, and out of such deposit, fifty per cent (50%) was allowed to be released and the balance was kept in UCO Bank in interest bearing fixed deposit.

13. The registry shall calculate the award as per modification ordered above, releasing the balance in favour of the claimants in terms of the impugned award, refunding the excess to the appellants.

14. The appeal along with pending application stands disposed of in above terms.

15. The statutory amount shall be refunded.

R.K.GAUBA, J.

SEPTEMBER 20, 2017
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