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

**Date of Decision: 08<sup>th</sup> March, 2016**

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**MAC.APP. 600/2012**

RELIANCE GENERAL INSURANCE CO LTD ..... Appellant

Through: Mr. K. L. Nandwani, Mr. P. Acharya  
& Ms. Neetika Chaturvedi, Advs.

versus

NEHA & ORS

..... Respondents

Through: Mr. Sanjiv Gupta, Adv.

**CORAM:**

**HON'BLE MR. JUSTICE R.K.GAUBA**

**JUDGMENT**

**R.K.GAUBA, J (ORAL):**

1. The appellant/insurance company raises two short issues concerning the directions in the judgment dated 18.02.2012 passed by the motor accident claims tribunal (the tribunal) on the claim petition of the first respondent (the claimant), registered as suit no.24/2010 seeking compensation for injuries sustained and permanent disability suffered by her as a result of a motor vehicular accident that had occurred on 03.04.2010 involving a truck bearing registration no.HR-55H-3757 admittedly insured with it (the appellant) against third party risk for the period in question.

2. The tribunal awarded ₹71,46,808/- as compensation with interest at the rate of nine percent (9%) per annum from the date of filing of the

petition (09.07.2010) till realization, directing the insurance company to pay, calculating the compensation as under:-

Treatment Expenses	:₹	20,768/-
Pain & suffering	:₹	75,000/-
Diet & conveyance	:₹	25,000/-
Attendant's charges	:₹	9,000/-
Loss of Studies	:₹	6,000/-
Disability	:₹	3,11,040/-
Loss of Marriage Prospects/ Disfigurement/amenities	:₹	1,00,000/-
Cost of Limb	:₹	66,00,000/-
Total		<u>:₹71,46,808/-</u>

3. The insurance company questions the addition of future prospects to the extent of fifty percent (50%) for calculating the loss of income on account of disability worked out as ₹3,11,040/-.

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 SCC166.

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. This applies to the matter at hand because the claimant here has not led any evidence showing the salary was subject to any periodic increase.

6. Since the income was notionally calculated, the element of future prospects has to be kept out. Thus, on the notional income of ₹11,520/-, worked out to the extent of 64% on account of permanent disability, factoring the loss of future income due to disability comes to (11520x18) ₹2,07,360/-. This would result in reduction of the compensation payable to the claimant by (3,11,040-2,07,360) ₹1,03,680/-.

7. The total compensation payable, thus, comes to (71,46,808-1,03,680) ₹70,43,128/-, rounded off to ₹70,44,000/-. The compensation is modified accordingly.

8. The second contention of the insurance company is that the cost of artificial limb and its replacement during the remainder of the life of the claimant computed as ₹66,00,000/- was made available to the claimant

unconditionally without in built guarantees that it may be availed of only upon need(s) for replacement or maintenance in future.

9. The learned counsel for the claimant fairly agreed to this reservation and submitted that the claimant is inclined, ready and willing to submit before the tribunal the quotations of the cost required to be incurred for replacement/maintenance of artificial limb from time to time with medical advice in support to seek withdrawal of the amounts put in the fixed deposit receipt(s). The directions given by the tribunal in the impugned judgment are accordingly modified. The release of such amounts as are required for aforesaid purposes from the fixed deposit receipts as directed by the tribunal to be taken out as per (para 29 of) the impugned judgment, would be only upon it being shown to the satisfaction of the tribunal that the quantum of expenses sought to be availed is necessary.

10. The insurance company had been directed by order dated 28.05.2012 to deposit twenty five percent (25%) of the awarded amount with up-to-date interest, out of which ₹3,00,000/- with proportionate interest was allowed to be released. The insurance company shall now deposit with the tribunal the balance in terms of the award modified as above, within 30 days whereupon the same shall be released as per impugned award with modification in terms noted above.

11. The statutory deposit, if made, shall be refunded.

12. The appeal is disposed of in above terms. Tribunal's record be returned.

**R.K. GAUBA**  
**(JUDGE)**

**MARCH 08, 2016/ssc**