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

**Date of Decision: 30<sup>th</sup> March, 2016**

+ MAC.APP. 666/2014 & CM Nos. 11942-43/2014

ORIENTAL INSURANCE CO. LTD. .... Appellant

Through: Mr. Manoj Bhandari, Adv.

Versus

PADAM SINGH (NOW DECEASED )& ORS ..... Respondents

Through: Mr. Rajeev Kumar & Mr. Saurabh  
Kumar, Advs.

AND

+ MAC.APP. 674/2014

SHASHI & ORS. .... Appellant

Through: Mr. Rajeev Kumar & Mr. Saurabh  
Kumar, Advs.

Versus

RAJ KUMAR& ORS .... Respondents

Through: Mr. Manoj Bhandari, Adv. for R-3.

**CORAM:**

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

**JUDGMENT**

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

1. Padam Singh, aged 36 years, a self-employed person, died as a result of injuries suffered in a motor vehicular accident that occurred at about 11.30 a.m. on 02.03.2009 involving truck bearing No. HR 38 J 3572 (the offending vehicle) which was admittedly insured against third party risk with the appellant insurance company (insurer) for the period in question. His dependant family members (first to sixth respondents in MAC Appeal No. 666/2014 and appellants in MAC Appeal No. 674/2014) took over the claim petition which was originally filed by Padam Singh himself for compensation under Sections 166 and 140 of Motor Vehicles, 1988 (MV Act) since he died during its pendency on account of injuries. In the said claim petition, the driver and owner of the offending vehicle were impleaded as respondents, in addition to the insurer.

2. The tribunal held inquiry and, by judgment dated 20.01.2014, awarded compensation in the sum of ₹ 9,40,160/- with interest @ 7.5 % per annum from the date of filing of the petition (15.7.2009), directing the insurance company to pay. The award has been calculated thus:-

|   |              |
|---|--------------|
| 1. <i>Loss of dependency</i>                        | ₹ 8,30,160/- |
| 2. <i>Medical expenses &amp; ancillary expenses</i> | ₹ 40,000/-   |
| 3. <i>Funeral &amp; miscellaneous expenses</i>      | ₹ 25,000/-   |
| 4. <i>Loss of estate</i>                            | ₹ 10,000/-   |
| 5. <i>Loss of Love &amp; affection</i>              | ₹ 25,000/-   |
| 6. <i>Loss of consortium</i>                        | ₹ 10,000/-   |
| <i>Total awarded compensation</i>                   | ₹ 9,40,160/- |
| <i>Less interim award</i>                           | ₹ 50,000/-   |
| <i>Total payable</i>                                | ₹ 8,90,160/- |

3. The insurance company by its appeal questions the calculation of loss of dependency on the ground that minimum wages of semi-skilled worker (₹

4,100/-) was wrongly adopted in absence of proof of the deceased being specially skilled in any manner. It is the contention of the insurer that minimum wages of unskilled worker at ₹ 3,934/- should instead have been adopted as the benchmark in absence of any formal proof income. This plea must be accepted.

4. The insurance company further submits that addition of future prospects of 50% of increase was unfounded and improper.

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. 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.

7. In above facts and circumstances, the loss of dependency must be calculated on the notional income of ₹ 3,934/- per month without addition of future prospects. Since the number of dependants was more than three, 1/4<sup>th</sup> had to be deducted towards personal & living expenses and rightly so done by the tribunal. In this view, the monthly loss of dependency is calculated at  $(3,934 \times 3 \div 4)$  ₹ 2,951/-. On the multiplier of 15, the total loss of dependency is calculated at  $(2951 \times 12 \times 15)$  ₹ 5,31,180/- rounded off to ₹ 5,32,000/-

8. This Court agrees with the submission of the claimants that the awards under the non-pecuniary heads on account of loss of estate, loss of love & affection and loss of consortium is inadequate. Following the view taken in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshamma* (2015) 9 SCC 150, compensation in the sum of ₹1 lakh each on account of love & affection and loss of consortium besides ₹ 25,000/- towards loss of estate, also adding the medical expenses of ₹ 40,000/- and funeral expenses of ₹ 25,000/-. The total compensation payable in the case comes to  $(5,32,000 + 2,90,000/-)$  ₹ 8,22,000/-.

9. Following the consistent view taken by this Court [see judgment dated 22.02.2016 in MAC.APP. 165/2011 *Oriental Insurance Co Ltd v. Sangeeta Devi & Ors.*], the rate of interest is increased to 9% per annum from the date of filing of the petition till realization. Needless to add, the interim award has to be suitably adjusted.

10. By order dated 28.07.2014 in MAC Appeal No. 666/2014, the insurance company had been directed to deposit the entire awarded amount with accumulated interest with Registrar General, and out of such deposit 75% was allowed to be released to the claimants, the balance kept in fixed deposit with UCO Bank, Delhi High Court Branch, for one year to be renewed from time to time.

11. The Registrar General is directed to calculate the shares payable to the claimants in terms of the above directions and release the same with proportionate interest in their favour in terms of the aforementioned directions. If there is any short fall, the same shall be deposited by the insurance company with the Registrar General within 30 days of today. On the other hand, if excess has been deposited or released, the same shall be refunded.

12. Statutory deposit, if made, shall be refunded.

13. Both appeals are disposed of in above terms.

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

**MARCH 30, 2016/nk**