

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

Pronounced on: 12th January, 2015

+ **MAC.APP. 189/2014**

HDFC ERGO GENERAL INSURANCE CO LTD Appellant
Through Mr. A.K. Soni, Advocate

Versus

SMT LALTA DEVI & ORS Respondents
Through Mr. Anshuman Bal, Advocate

+ **MAC.APP. 640/2014**

LALTA DEVI & ANR. Appellants
Through Mr. Anshuman Bal, Advocate

versus

HDFC ERGO GENERAL INSURANCE CO LTD & ORS.
..... Respondents
Through Mr. A.K. Soni, Advocate for
Respondent no.1 insurance company

CORAM:
HON'BLE MR. JUSTICE G.P. MITTAL

G.P. MITTAL, J.

1. These two appeals arise out of a judgment dated 08.10.2013 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby a compensation of Rs.19,50,000/- was awarded to the parents of the deceased Aditya who had lost his life in a motor vehicular accident

which occurred on 19.06.2011 at 10:40 a.m. near Village Bhatipur, Luxor Road, Haridwar, Uttrakhand.

2. MAC APP.189/2014 is preferred by the HDFC Ergo General Insurance Company Limited (the Insurance Company), the insurer of the offending vehicle on the plea that the compensation awarded is exorbitant and excessive whereas MAC APP.640/2014 has been filed by the parents of the deceased Aditya (the Claimants) for enhancement of compensation.
3. The Appellant Insurance Company hereinafter shall be referred to as the Insurance Company, whereas the Appellants in MAC APP.640/2014 shall be referred to as the Claimants.
4. The question of negligence is not disputed by the learned counsel for the Insurance Company in MAC APP.189/2014.
5. Deceased Aditya was pursuing B.Tech. 3rd year from Echelon Institute of Technology, Faridabad, affiliated to Maharshi Dayanand University, Rohtak. The Claims Tribunal while referring to the judgment in *B. Ramulamma & Ors. v. Venkatesh Bus Union & Anr.* 2011 ACJ 1702 (AP High Court), assumed the minimum income of the deceased as Rs.25,000/- per month, deducted 2500/- towards

liability of the income tax, deducted 50% towards personal and living expenses and applied a multiplier of 14 as per the age of the deceased's mother (41 years) and computed the loss of dependency as Rs.18,90,000/-. The Claims Tribunal further added a sum of Rs.25,000/- towards loss of love and affection and funeral expenses and Rs.10,000/- towards loss of estate.

6. It is urged on behalf of the Insurance Company that the assumption of income of Rs.25,000/- per month was on the higher side, particularly in view of the fact that deceased Aditya has not been able to clear all the subjects even in the first semester and the second semester. It is contended that the Claims Tribunal ought to have taken the minimum wages of a matriculate to compute the loss of dependency.
7. On the other hand while arguing that the compensation awarded was too meagre and low, the following contentions are raised on behalf of the Claimants.

- (i) Aditya was a student of B.Tech., in due course he was to get a settled job with good future prospects. Addition 50% towards future prospects should have been made. Reliance is placed on *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *V. Mekala v. M. Malathi & Anr.*, (2014) 11 SCC 178.

- (ii) Since deceased Aditya was aged 20 years of age, the Claims Tribunal ought to have adopted a multiplier of 18 instead of 14 on the basis of the age of the mother of the deceased. Reliance is placed on *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121; *Reshma Kumari & Ors. v. Madan Mohan & Anr.*, (2013) 9 SCC 65; and
- (iii) The compensation of Rs.25,000/- awarded towards loss of love and affection on the lower side.

FUTURE PROSPECTS

8. It is no gainsaying that in appropriate cases some addition towards future prospects must be made in case of death or injury of a person pursuing a professional course. At the same time, it cannot be laid down as a uniform principle that every person pursuing professional course will have a bright future. There may be a student pursuing engineering from the reputed engineering colleges like Indian Institute of Technology (IIT), Regional Engineering College or any other reputed college. At the same time, a number of engineering Colleges have mushroomed where an engineering graduate may find it difficult to secure a job of an engineer. In the instant case, deceased Aditya, as stated earlier was a student of an unknown engineering college, *i.e.*

Echelon Institute of Technology, Faridabad which is claimed to be affiliated to Maharshi Dayanand University, Rohtak. The Claimants have placed on record result-cum-detailed marks card of First and Second Semester. It may be noted that the deceased had secured just ordinary marks in seven subjects and he had to re-appear in papers 1002 (Mathematical-I), 1006 (Foundation of Computer & Programming) and 1008 (Basics of Mechanical Engineering). Similarly, in the Second Semester the deceased was absent in one of the 12 papers and out of 11 subjects for which he had taken examination, he was to re-appear in four subjects. Thus, it will be difficult to say that the deceased was a brilliant student or that he was pursuing engineering from a well known or even mediocre college.

9. The learned counsel for the Claimants has referred to a three Judge Bench decision of the Supreme Court in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 to contend that the future prospects have to be added in all cases where a person is getting fixed wages or is a seasonal employee or is a student.
10. It is urged by the learned counsel for the Claimants that the law laid down in *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121 was extended in *Rajesh & Ors. v. Rajbir Singh*

& Ors., (2013) 9 SCC 54 to hold that future prospects ought to be extended in all cases.

11. On the other hand, the learned counsel for the Insurance Company refers to a three Judge Bench decision of the Supreme Court in *Reshma Kumari & Ors. v. Madan Mohan & Anr.*, (2013) 9 SCC 65 wherein while approving the ratio with regard to future prospects in *Sarla Verma (Smt.) & Ors. (supra)* and relying on *General Manager, Kerala State Road Transport Corporation, Trivandrum v. Susamma Thomas (Mrs.) and Ors.* (1994) 2 SCC 176; *Sarla Dixit v. Balwant Yadav*, (1996) 3 SCC 179 and *Abati Bezbaruah v. Dy. Director General, Geological Survey of India & Anr.*, 2003 (3) SCC 148, the Supreme Court held as under:-

“38. With regard to the addition to income for future prospects, in Sarla Verma [Sarla Verma v. DTC, (2009) 6 SCC 121 : (2009) 2 SCC (Civ) 770 : (2009) 2 SCC (Cri) 1002] , this Court has noted the earlier decisions in Susamma Thomas [Kerala SRTC v. Susamma Thomas, (1994) 2 SCC 176 : 1994 SCC (Cri) 335] , Sarla Dixit[(1996) 3 SCC 179] and Abati Bezbaruah [Abati Bezbaruah v. Geological Survey of India, (2003) 3 SCC 148 : 2003 SCC (Cri) 746] and in para 24 of the Report held as under: (Sarla Verma case [Sarla Verma v. DTC, (2009) 6 SCC 121 : (2009) 2 SCC (Civ) 770 : (2009) 2 SCC (Cri) 1002] , SCC p. 134)

“24. ... In view of the imponderables and uncertainties, we are in favour of adopting as a rule of thumb, an

addition of 50% of actual salary to the actual salary income of the deceased towards future prospects, where the deceased had a permanent job and was below 40 years. (Where the annual income is in the taxable range, the words 'actual salary' should be read as 'actual salary less tax'). The addition should be only 30% if the age of the deceased was 40 to 50 years. There should be no addition, where the age of the deceased is more than 50 years. Though the evidence may indicate a different percentage of increase, it is necessary to standardise the addition to avoid different yardsticks being applied or different methods of calculation being adopted. Where the deceased was self-employed or was on a fixed salary (without provision for annual increments, etc.), the courts will usually take only the actual income at the time of death. A departure therefrom should be made only in rare and exceptional cases involving special circumstances."

39. *The standardization of addition to income for future prospects shall help in achieving certainty in arriving at appropriate compensation. We approve the method that an addition of 50% of actual salary be made to the actual salary income of the deceased towards future prospects where the deceased had a permanent job and was below 40 years and the addition should be only 30% if the age of the deceased was 40 to 50 years and no addition should be made where the age of the deceased is more than 50 years. Where the annual income is in the taxable range, the actual salary shall mean actual salary less tax. In the cases where the deceased was self-employed or was on a fixed salary without provision for annual increments, the actual income at the time of death without any addition to income for future prospects will be appropriate. A departure from the above principle can only be justified in extraordinary circumstances and very exceptional cases."*

12. The learned counsel for the Insurance Company relies upon a Constitutional Bench judgment of the Supreme Court in *Central Board of Dawoodi Bohra Community & Anr. v. State of Maharashtra & Anr.*, (2005) 2 SCC 673; *Safiya Bee v. Mohd. Vajahath Hussain @ Fasi*, (2011) 2 SCC 94; and *Union of India & Ors. v. S.K. Kapoor*, (2011) 4 SCC 589 to contend that in case of divergence of opinion in judgments of benches of co-equal strength, earlier judgment will be taken as a binding precedent.
13. It may be noted that in *Reshma Kumari & Ors. v. Madan Mohan & Anr.*, (2013) 9 SCC 65; the three Judge Bench was dealing with a reference made by a two Judge Bench (S.B. Sinha and Cyriac Joseph, J.J.). The two Hon'ble *Judges* wanted an authoritative pronouncement from a Larger Bench on the question of applicability of the multiplier and whether the inflation was built in the multiplier. The three Judge Bench approved the two Judge Bench decision of the Supreme Court in *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121 with regard to the selection of multiplier. It further laid down that addition towards future prospects to the extent of 50% of the actual salary shall be made towards future prospects when the deceased had a permanent job and was below 40 years and addition of

30% should be made if the age of the deceased was between 40-50 years. No addition towards future prospects shall be made where the deceased was self-employed or was getting a fixed salary without any provision of annual increment.

14. Of course, three Judge Bench of the Supreme Court in its later judgment in *Rajesh* relying on *Santosh Devi v. National Insurance Company Ltd. & Ors.*, 2012 (6) SCC 421 observed that there would be addition of 30% and 50%, depending upon the age of the deceased, towards future prospects even in the case of self-employed persons. It may, however, be noted that in *Rajesh*, the three Judge Bench decision in *Reshma Kumari (supra)* was not brought to the notice of their Lordships.
15. The divergence of opinion was noted by another three Judge Bench of the Supreme Court in *Sanjay Verma v. Haryana Roadways*, (2014) 3 SCC 210. In paras 14 and 15, the Supreme Court observed as under:-

“14. Certain parallel developments will now have to be taken note of. In Reshma Kumari v. Madan Mohan [(2009) 13 SCC 422 : (2009) 5 SCC (Civ) 143 : (2010) 1 SCC (Cri) 1044] , a two-Judge Bench of this Court while considering the following questions took the view that the issue(s) needed resolution by a larger Bench: (SCC p. 425, para 10)

“(1) Whether the multiplier specified in the Second Schedule appended to the Act should be scrupulously applied in all the cases?”

“(2) Whether for determination of the multiplicand, the Act provides for any criterion, particularly as regards determination of future prospects?”

15. Answering the above reference a three-Judge Bench of this Court in Reshma Kumari v. Madan Mohan [(2013) 9 SCC 65 : (2013) 4 SCC (Civ) 191 : (2013) 3 SCC (Cri) 826] (SCC p. 88, para 36) reiterated the view taken in Sarla Verma [Sarla Verma v. DTC, (2009) 6 SCC 121 : (2009) 2 SCC (Civ) 770 : (2009) 2 SCC (Cri) 1002] to the effect that in respect of a person who was on a fixed salary without provision for annual increments or who was self-employed the actual income at the time of death should be taken into account for determining the loss of income unless there are extraordinary and exceptional circumstances. Though the expression “exceptional and extraordinary circumstances” is not capable of any precise definition, in Shakti Devi v. New India Insurance Co. Ltd. [(2010) 14 SCC 575 : (2012) 1 SCC (Civ) 766 : (2011) 3 SCC (Cri) 848] there is a practical application of the aforesaid principle. The near certainty of the regular employment of the deceased in a government department following the retirement of his father was held to be a valid ground to compute the loss of income by taking into account the possible future earnings. The said loss of income, accordingly, was quantified at double the amount that the deceased was earning at the time of his death.”

16. Further, the divergence of opinion in *Reshma Kumari & Ors. v. Madan Mohan & Anr.*, (2013) 9 SCC 65 and *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 was noticed by the Supreme Court in another latest judgment in *National Insurance Company Ltd. v.*

Pushpa & Ors., CC No.8058/2014, decided on 02.07.2014 and in concluding paragraph while making reference to the Larger Bench, the Supreme Court held as under:-

“Be it noted, though the decision in Reshma (supra) was rendered at earlier point of time, as is clear, the same has not been noticed in Rajesh (supra) and that is why divergent opinions have been expressed. We are of the considered opinion that as regards the manner of addition of income of future prospects there should be an authoritative pronouncement. Therefore, we think it appropriate to refer the matter to a larger Bench.”

17. Now, the question is which of the judgments ought to be followed awaiting answer to the reference made by the Supreme Court in *Pushpa & Ors. (supra)*.
18. In *Central Board of Dawoodi Bohra Community & Anr. v. State of Maharashtra & Anr., (2005) 2 SCC 673* in para 12, the Supreme Court observed as under:-

“12. Having carefully considered the submissions made by the learned Senior Counsel for the parties and having examined the law laid down by the Constitution Benches in the abovesaid decisions, we would like to sum up the legal position in the following terms:

(1) The law laid down by this Court in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or coequal strength.

(2) [Ed.: Para 12(2) corrected vide Official Corrigendum No. F.3/Ed.B.J./21/2005 dated 3-3-2005.] A Bench of lesser quorum cannot disagree or dissent

from the view of the law taken by a Bench of larger quorum. In case of doubt all that the Bench of lesser quorum can do is to invite the attention of the Chief Justice and request for the matter being placed for hearing before a Bench of larger quorum than the Bench whose decision has come up for consideration. It will be open only for a Bench of coequal strength to express an opinion doubting the correctness of the view taken by the earlier Bench of coequal strength, whereupon the matter may be placed for hearing before a Bench consisting of a quorum larger than the one which pronounced the decision laying down the law the correctness of which is doubted.

(3) [Ed.: Para 12(3) corrected vide Official Corrigendum No. F.3/Ed.B.J./7/2005 dated 17-1-2005.] The above rules are subject to two exceptions: (i) the abovesaid rules do not bind the discretion of the Chief Justice in whom vests the power of framing the roster and who can direct any particular matter to be placed for hearing before any particular Bench of any strength; and (ii) in spite of the rules laid down hereinabove, if the matter has already come up for hearing before a Bench of larger quorum and that Bench itself feels that the view of the law taken by a Bench of lesser quorum, which view is in doubt, needs correction or reconsideration then by way of exception (and not as a rule) and for reasons given by it, it may proceed to hear the case and examine the correctness of the previous decision in question dispensing with the need of a specific reference or the order of the Chief Justice constituting the Bench and such listing. Such was the situation in Raghbir Singh [(1989) 2 SCC 754] and Hansoli Devi [(2002) 7 SCC 273].”

19. Similarly, in *Safiya Bee v. Mohd. Vajahath Hussain @ Fasi*, (2011) 2

SCC 94 in para 27, the Supreme Court observed as under:-

“27. However, even assuming that the decision in WP No. 35561 of 1998 did not operate as res judicata, we are constrained to observe that even if the learned Judges who decided WP No. 304 of 2001 did not agree with the view taken by a coordinate Bench of equal strength in the earlier WP No. 35561 of 1998 regarding the interpretation of Section 2(c) of the Act and its application to the petition schedule property, judicial discipline and practice required them to refer the issue to a larger Bench. The learned Judges were not right in overruling the statement of the law by a coordinate Bench of equal strength. It is an accepted rule or principle that the statement of the law by a Bench is considered binding on a Bench of the same or lesser number of Judges. In case of doubt or disagreement about the decision of the earlier Bench, the well-accepted and desirable practice is that the later Bench would refer the case to a larger Bench.”

20. In *Union of India & Ors. v. S.K. Kapoor*, (2011) 4 SCC 589 while holding that the decision of the Co-ordinate Bench is binding on the subsequent Bench of equal strength, held that the Bench of Co-ordinate strength can only make a reference to a larger Bench. In para 9 of the report, the Supreme Court held as under:-

“9. It may be noted that the decision in S.N. Narula case [(2011) 4 SCC 591] was prior to the decision in T.V. Patel case [(2007) 4 SCC 785 : (2007) 2 SCC (L&S) 98] . It is well settled that if a subsequent coordinate Bench of equal strength wants to take a different view, it can only refer the matter to a larger Bench, otherwise the prior decision of a coordinate Bench is binding on the subsequent Bench of equal strength. Since, the decision in S.N. Narula case [(2011) 4 SCC 591] was not noticed in T.V. Patel case [(2007) 4 SCC 785 : (2007) 2 SCC (L&S) 98] , the latter decision

is a judgment per incuriam. The decision in S.N. Narula case [(2011) 4 SCC 591] was binding on the subsequent Bench of equal strength and hence, it could not take a contrary view, as is settled by a series of judgments of this Court.”

21. This Court in *New India Assurance Co. Ltd. v. Harpal Singh & Ors.*, MAC APP.138/2011, decided on 06.09.2013, went into this question and held that in view of the report in *S.K. Kapoor (supra)*, the three Judge Bench decision in *Reshma Kumari & Ors. (surpa)* shall be taken as a binding precedent.
22. Consequently, it cannot be said that every person including a student would be entitled to addition of 50% towards future prospects. In the instant case, I have already noted above that deceased Aditya was pursuing engineering from a little known college and from an ordinary University. He had failed in a number of subjects in first and second semester. Thus, the Claimants will not be entitled to any addition towards future prospects.

MULTIPLIER

23. It is urged by the learned counsel for the Claimants that multiplier has to be as per the age of the deceased and not as per the age of the Claimants. In support of his contention, the learned counsel for the Claimants places reliance on *Sarla Verma (Smt.) & Ors. v. Delhi*

Transport Corporation & Anr., (2009) 6 SCC 121 and *Reshma Kumari & Ors. v. Madan Mohan & Anr.*, (2013) 9 SCC 65; wherein it was held that the multiplier has to be taken as per the age of the deceased.

24. This issue was gone into detail by this Court wherein the history of awarding reasonable compensation was gone into. This Court referred to a three Judge Bench decision in *U.P. SRTC v. Trilok Chandara*, (1996) 4 SCC 362; *General Manager, Kerala State Road Transport Corporation, Trivandrum v. Susamma Thomas (Mrs.) and Ors.* (1994) 2 SCC 176; another three Judge Bench decision of the Supreme Court in *New India Assurance Company Ltd. v. Shanti Pathak (Smt.) & Ors.*, (2007) 10 SCC 1, *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121 and *National Insurance Company Ltd. v. Shyam Singh & Ors.*, (2011) 7 SCC 65, and in paras 4 to 8 observed as under:-

“4. As far as the selection of multiplier is concerned, the law is settled that the choice of multiplier is determined by the age of the deceased or that of the claimants whichever is higher. There is a three Judges Bench judgment of the Supreme Court in *U.P. State Road Transport Corporation & Ors. v. Trilok Chandra & Ors.*, (1996) 4 SCC 362, where the Supreme Court relied on *G.M., Kerala SRTC v. Susamma Thomas*, (1994) 2 SCC 176 and reiterated that the choice of the multiplier is determined by the age of the deceased or that of the claimants whichever is more. Para 12 of the report is extracted hereunder:-

“12. For concluding the analysis it is necessary now to refer to the judgment of this Court in the case of General Manager, Kerala State Road Transport, v. Susamma Thomas: (1994) 2 SCC 176. In that case this Court culled out the basic principles governing the assessment of compensation emerging from the legal authorities cited above and reiterated that the multiplier method is the sound method of assessing compensation. The Court observed:

“The multiplier method involves the ascertainment of the loss of dependency or the multiplicand having regard to the circumstances of the case and capitalizing the multiplicand by an appropriate multiplier. The choice of the multiplier is determined by the age of the deceased (or that of the claimants, whichever is higher) and by the calculation as to what capital sum, if invested at a rate of interest appropriate to a stable economy, would yield the multiplicand by way of annual interest. In ascertaining this, regard should also be had to the fact that ultimately the capital sum should also be consumed-up over the period for which the dependency is expected to last.

The principle was explained and illustrated by a mathematical example:

“The multiplier represents the number of Years' purchase on which the loss of dependency is capitalised. Take for instance a case where annual loss of dependency is Rs. 10,000. If a sum of Rs.1,00,000 is invested at 10% annual interest, the interest will take care of the dependency, perpetually. The multiplier in this case works out to 10. If the rate of interest is 5% per annum and not 10%

then the multiplier needed to capitalise the loss of the annual dependency at Rs.10,000 would be 20. Then the multiplier i.e., the number of Years' purchase of 20 will yield the annual dependency perpetually. Then allowance to scale down the multiplier would have to be made taking into account the uncertainties of the future, the allowances for immediate lump sum payment, the period over which the dependency is to last being shorter and the capital feed also to be spent away over the period of dependency is to last etc. Usually in English Courts the operative multiplier rarely exceeds 16 as maximum. This will come down accordingly as the age of the deceased person (or that of the dependents, whichever is higher) goes up."

5. *There is another three Judges' decision of the Supreme Court in New India Assurance Company Ltd. v. Shanti Pathak (Smt.) & Ors., (2007) 10 SCC 1, where in the case of the death of a bachelor, who was aged only 25 years, the multiplier of 5 was applied according to the age of the mother of the deceased, who was about 65 years at the time of the accident. Para 6 of the report is extracted hereunder:-*

"6. Considering the income that was taken, the foundation for working out the compensation cannot be faulted. The monthly contribution was fixed at Rs.3,500/-. In the normal course we would have remitted the matter to the High Court for consideration on the materials placed before it. But considering the fact that the matter is pending since long, it would be appropriate to take the multiplier of 5 considering the fact that the mother of

the deceased is about 65 years at the time of the accident and age of the father is more than 65 years. Taking into account the monthly contribution at Rs.3,500/- as held by the Tribunal and the High Court, the entitlement of the claim would be Rs.2,10,000/-. The same shall bear interest @ 7.5% p.a. from the date of the application for compensation. Payment already made shall be adjusted from the amount due.”

6. *Learned counsel for the Appellant referred to Sarla Verma (supra) in support of the proposition that age of the deceased is to be taken into consideration for selection of the multiplier. As an example the multiplier taken in various cases such as in Susamma Thomas (supra), U.P. SRTC v. Trilok Chandara, (1996) 4 SCC 362 as clarified in New India Assurance Co. Ltd. v. Charlie, (2005) 10 SCC 720 and the multiplier as mentioned in Second Schedule to the Motor Vehicles Act were compared and it was held that the multiplier as per Column No.4 in the said table was appropriate for application. Sarla Verma (supra) related to the death of one Rajinder Prakash who had left behind his widow, three minor children apart from his parents and the grandfather. Obviously, the age of the deceased was taken into consideration for the purpose of selection of the multiplier as the deceased left behind a widow younger to him, apart from three minor children. It was not laid down as a proposition of law that irrespective of the age of the claimants, the age of the deceased is to be taken into consideration for selection of the multiplier for calculation of the loss of dependency. It is true that in Mohd. Ameeruddin (supra 2) and P.S. Somanathan (supra 3) and National Insurance Company Ltd. v. Azad Singh (supra 5), the Hon'ble Supreme Court applied the multiplier according to the age of the deceased, yet in view of Trilok Chandra (supra) and Shanti Pathak (supra) decided by the three Judges of the Supreme Court, the judgment in Mohd. Ameeruddin (supra 2), P.S.*

Somanathan (supra 3) and Azad Singh (supra 5) cannot be taken as a precedent for selection of the multiplier.

7. *In the latest judgment of the Supreme Court in National Insurance Company Ltd. v. Shyam Singh & Ors., (2011) 7 SCC 65, decided on 04.07.2011, the Supreme Court referred to Ramesh Singh & Anr. v. Satbir Singh & Anr., (2008) 2 SCC 667 and held that the multiplier as per the age of the deceased or the claimant whichever is higher would be applicable. Para 9 and 10 of the report are apposite:-*

“9. This Court in the case of Ramesh Singh & Anr. v. Satbir Singh & Anr., (2008) 2 SCC 667, after referring to the earlier judgments of this Court, in detail, dealt with the law with regard to determination of the multiplier in a similar situation as in the present case. The said findings of this Court are as under:-

“6. We have given anxious consideration to these contentions and are of the opinion that the same are devoid of any merits. Considering the law laid down in New India Assurance Co. Ltd. v. Charlie, AIR 2005 SC 2157, it is clear that the choice of multiplier is determined by the age of the deceased or claimants whichever is higher. Admittedly, the age of the father was 55 years. The question of mother's age never cropped up because that was not the contention raised even before the Trial Court or before us. Taking the age to be 55 years, in our opinion, the courts below have not committed any illegality in applying the multiplier of 8 since the father was running 56th year of his life.”

10. *In our view, the dictum laid*

down in Ramesh Singh (supra) is applicable to the present case on all fours.

Accordingly, we hold that the Tribunal had rightfully applied the multiplier of 8 by taking the average of the parents of the deceased who were 55 and 56 years.”

8. Similarly in Manam Saraswathi Sampoorna Kalavathi & Ors., v. The Manager, APSRTC, Tadepalligudem A.P. & Anr., (2010) 5 SCC 785, decided on 26.03.2010, the multiplier of 13 was applied in case of death of a young bachelor where the mother was 47 years of age.”

25. There is no manner of doubt that the appropriate multiplier while awarding compensation for death of an unmarried boy, the multiplier will be selected on the basis of age of the mother of the deceased.
26. In the instant case, the Claims Tribunal adopted the multiplier of 14 as the Claimant Lalta Devi (mother of the deceased Aditya) was aged 41 years which is accepted and affirmed.

MULTIPLICANT

27. Now, the question for consideration is as to what should be the potential income of a bachelor who had just passed higher secondary examination with more than 60% marks but who was not very good in his performance while pursuing his engineering and that too from an ordinary Institution.

28. The Claimants examined Dev Kumar Chaudhary, the deceased father who testified that he had spend a sum of Rs.92,781/- per year as a tuition fee for the course of B.Tech. He stated that his son Aditya was a student of 3rd year B.Tech from Echelon Institute of Technology, Faridabad. A sum of Rs.92,781/- approximately was spent per year towards tuition fee. On completion of course, the deceased was likely to get a monthly salary of Rs.40,000/-. No record of placement of the student from this college was placed on record. Moreover, as noticed above, performance of Aditya was not up to the mark. At the same time, it can be assumed that in due course, the deceased would have cleared his examination and even if he would not have completed the course in another 1½ years, *i.e*, in four years, he might have taken another six months or a year to clear all the papers. The vex question which confront this Court is as to what should be the potential income of the deceased.

29. In the case of *Haji Zainullah Khan (Dead) by Lrs. v. Nagar Mahapalika, Allahabad*, 1994 (5) SCC 667, death of a young boy, aged 20 years took place in an accident which happened in the year 1972. The deceased was a student of B.Sc Ist year (Biology), a

compensation of ₹1,46,900/- was increased and rounded off to ₹ 1,50,000/-.

30. In *Ganga Devi & Ors. v. New India Assurance Co. Ltd. & Ors.*, MAC APP. 359/2008, decided by this Court on 23.11.2009, which was related to the death of a student (studying medicine) who was doing internship and was to be awarded the MBBS degree in a short time, the Tribunal awarded a compensation of ₹ 9,35,352/- on the basis of the minimum wages of a Graduate. This Court observed that although the deceased was getting a stipend of ₹ 5,000/- per month at the time of his death due to the accident, he would have ultimately joined as a doctor at a salary ranging between ₹ 16,000/- per month to ₹ 25,000/- per month. Thus, the average monthly income of the deceased was taken as ₹ 18,000/- and after adding 50% towards future prospects, the compensation was enhanced to ₹ 21,36,000/-.

31. In *Ramesh Chand Joshi v. New India Assurance Company*, MAC APP.212-213/2006 decided on 20.01.2010, this Court took the potential income of a BE (Bio-Technology) First year student of Delhi College of Engineer (DCE) as ₹38,333/- per month.

32. A Division Bench of Andhra Pradesh High Court in *B.Ramulamma & Ors. v. Venkatesh, Bus Union, Rep. by A.M. Velu Mudaliyar & Anr.*,

2011 ACJ 1702, held that it was very difficult to determine the income of a student who was allowed to complete his course. It was observed that it was appropriate and reasonable to take a salary at the entry level which is fixed by the Govt. for such jobs.

33. In the circumstances of the case, it can be assumed that the deceased might not have been able to obtain a Class-I job in the government sector or a lucrative job in the private sector. I shall have to make a guess work and assume that the deceased might have been able to procure a job of a junior engineer in the government or in public sector undertaking or similar such job in a private sector. Starting salary of a junior engineer with basic pay of Rs.9300/- and Grade Pay of Rs. 4200/- on the date of the accident was in the vicinity of Rs.25,000/- as taken by the Claims Tribunal. Thus, even in private sector deceased would have been able to secure a job with a salary of about Rs.26,000/-. To be precise, the breakup can be as under:-

Basic Pay	9300
Grade Pay	4200
DA (51%)	6885
HRA	4050
TA	2416
Total	26,851/- x 12 = Rs.3,22,212/-

34. If the amount on HRA is spent on hiring a house, the same would be non-taxable. The liability towards income tax would thus be Rs.13659/-.
35. The loss of dependency thus comes to Rs.21,59,871/- (3,22,212/- - 13659/-(income tax) x $\frac{1}{2}$ x 14) as against Rs.18,90,000/- awarded by the Claims Tribunal.
36. The Claims Tribunal awarded a sum of Rs.25,000/- towards loss of love and affection. In view of the judgment in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and with the inflation, the Claimants are awarded a sum of Rs.1,00,000/- towards loss of love and affection.
- The revised compensation is tabulated as under:-

Sl. No.	Compensation under various heads	Awarded by the Claims Tribunal	Awarded by this Court
1.	Loss of Dependency	18,90,000/-	21,59,871/-
2.	Loss of Love and Affection	25,000/-	1,00,000/-
3.	Funeral Expenses	25,000/-	25,000/-
4.	Loss of Estate	10,000/-	10,000/-
	Total	Rs.19,50,000/-	Rs.22,94,871/-

37. The compensation is accordingly enhanced by Rs.3,44,871/- which shall carry interest @ 9% per annum as granted by the Claims Tribunal.
38. The entire enhanced compensation shall go to the first Claimant Lalta Devi (mother of the deceased Aditya). Sixty percent of the enhanced compensation along with proportionate interest shall be held in fixed deposit for a period of one, two and three years respectively in equal proportion. Rest 40% with proportionate interest shall be released on deposit.
39. MAC APP.189/2014 preferred by the Insurance Company is consequently dismissed.
40. MAC APP.640/2014 preferred by the Claimants is allowed in above terms.
41. Pending applications, if any, also stand disposed of.

(G.P. MITTAL)
JUDGE

JANUARY 12, 2015
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