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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 12th January, 2015

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MAC.APP. 234/2010

GUDIA & ORS.

..... Appellants

Through: Mr.O.P. Mannie, Advocate

versus

MUKESH & ORS.

..... Respondents

Through: Advocate (*presence not given*)

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The Appellants seek enhancement of compensation of Rs.5,83,000/- awarded by the Motor Accident Claims Tribunal(the Claims Tribunal) for the death of Hem Raj who succumbed to fatal injuries sustained by him in a motor vehicular accident which occurred on 24.07.2007 at about 11:15 p.m. near Mukarba Chowk, G.T. Road, Delhi.
2. In the absence of any appeal by the Insurance Company or the owner and driver of the vehicle, finding on negligence reached by the Claims Tribunal has attained finality.

3. A very short submission is raised by Mr. O.P. Mannie, the learned counsel for the Appellants. It is urged that the deceased was a self-employed person and was earning Rs.8,000/- per month at the time of his death. Even if the Claims Tribunal took minimum wages of an unskilled employee in the absence of any proof of income for arriving at the amount of compensation, there ought to have been an addition of 50% towards future prospects. Reliance is placed on a three Judge Bench decision in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Santosh Khandelwal & Ors. v. Abbas & Ors.*, MAC.APP.31/2010. It is urged that future prospects granted in case of a person earning fixed wages is on account of inflation and thus as held in *Santosh Devi v. National Insurance Company Ltd. & Ors.*, 2012 (4) SCALE 559, addition of 50% ought to have been made by the Claims Tribunal in the present case also.
4. The learned counsel for the Appellants relying on *Rajbir Singh*(supra) contends that the compensation of Rs.10,000/- towards loss of consortium is on the lower side, it ought to have been Rs.1,00,000/-. Similarly, the compensation awarded towards loss of love and affection is also sought to be raised.
5. 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 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 only 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 aged 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.

6. Of course, the three Judge Bench of the Supreme Court in its later judgment in *Rajesh & Others* (supra) relying upon *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 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.
7. 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.”

8. 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 also 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 the 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.”

9. Now, the question is which of the two 3 Judge Bench judgments ought to be followed awaiting answer to the reference made by the Supreme Court in *Pushpa & Ors. (supra)*.
10. 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 *Raghubir Singh* [(1989) 2 SCC 754] and *Hansoli Devi* [(2002) 7 SCC 273].”*

11. 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.”

12. Further, 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, the Supreme Court 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.”

13. In view of the judgment in *Reshma Kumari(supra)*, the judgment of this Court in *Santosh Khandelwal & Ors. v. Abbas & Ors.(supra)* cannot be taken advantage of by the claimant. The loss of dependency at Rs.5,31,000/- was rightly computed by the Claims Tribunal without addition of any future prospects. However, the compensation of Rs.7,000/- awarded towards funeral expenses is enhanced to Rs.25,000/-. Further, compensation for loss of consortium and loss of love and affection is enhanced from Rs.10,000/- and Rs.25,000/- respectively to Rs.1,00,000/- each.
14. The compensation is accordingly enhanced from Rs.5,83,000/- to Rs.7,56,000/-
15. The enhanced compensation of Rs.1,83,000/- shall carry interest @ 7.5% per annum as granted by the Claims Tribunal.
16. 70% of the enhanced compensation shall go to Appellant no.1 towards her and for the benefit of her children. Rest 30% shall go to Respondent no.4, mother of the deceased.
17. 75% of the enhanced compensation along with proportionate

interest awarded to Appellant no.1 shall be held in Fixed Deposit for a period of two, four and six years in equal proportion, rest 25% shall be released to her on deposit.

18. 50% of the enhanced compensation along with proportionate interest awarded to Respondent no.4 shall be held in Fixed Deposit for a period of three years. Rest 50% shall be released to her on deposit.
19. The enhanced compensation along with interest shall be deposited by Respondent no.3 Reliance General Insurance Co. Ltd. within four weeks.
20. The appeal is accordingly allowed in above terms.
21. Pending applications also stand disposed of.

(G.P. MITTAL)
JUDGE

JANUARY 12, 2015

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