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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 18th February, 2015

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MAC.APP. 368/2012

RAM SURESH

..... Appellant

Through: Mr. Navneet Goyal, Advocate

versus

BUNTY & ORS.

..... Respondents

Through: Mr. Saral Chaturvedi, Adv.
with Mr. Pankaj Gupta, Adv.
for Ms. Suman Bagga, Adv. for
R-3.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The appeal is for enhancement of compensation of Rs.9,27,974/- awarded by the Motor Accident Claims Tribunal (the Claims Tribunal) in favour of the Appellant (the Claimant) for having suffered injuries in a motor vehicular accident which occurred on 07.04.2009 at 6:30 p.m. near Shanker Crossing Flyover, Gurgaon resulting in amputation of Appellant's left leg above knee.

2. The Claims Tribunal awarded the total compensation of Rs.9,27,974/- which is tabulated in para 20 of the impugned judgment and is extracted hereunder:-

a)	<i>Medical expenses</i>	<i>Rs.19,270/-</i>
b)	<i>Loss of income</i>	<i>Rs.47,208/-</i>
c)	<i>Loss of future income (earning capacity)</i>	<i>Rs.5,66,496/-</i>
d)	<i>Special diet</i>	<i>Rs.10,000/-</i>
e)	<i>Conveyance & attendant charges</i>	<i>Rs.20,000/-</i>
f)	<i>Future treatment expenses</i>	<i>Rs.15,000/-</i>
g)	<i>Physical disfigurement & loss of amenities of life</i>	<i>Rs.1,00,000/-</i>
h)	<i>Pain and suffering</i>	<i>Rs.50,000/-</i>
i)	<i>Loss of marriage prospects</i>	<i>Rs.1,00,000/-</i>
	Total	9,27,974/-

3. It is urged by the learned counsel for the Appellant that the Appellant suffered 75% disability in respect of left lower limb on account of its amputation above knee. The Claims Tribunal erred in assessing the functional disability as 37.5% only. It is stated that the Appellant was working as a driver and he was

totally incapacitated because of the injuries suffered by him and the loss of earning capacity should have been taken as 100% or in any case at least 75% which was the disability percentage.

4. It is urged that the Appellant had to remain as an indoor patient for a very long time. He was admitted in hospital on three occasions and underwent several surgeries. The compensation towards loss of amenities and pain and suffering is also on the lower side.
5. On the other hand, the learned counsel for Respondent no.3 Insurance Company supports the impugned judgment. He urges that the compensation awarded is appropriate and in any case, it cannot be said to be on the lower side.
6. It is stated that the Appellant could not prove that he was a professional driver. The Claims Tribunal made addition of 100% towards future prospects which was not permissible. Reliance is placed on *Reshma Kumari & Ors. v. Madan Mohan & Anr.*, (2013) 9 SCC 65 and a judgment of this Court in *HDFC ERGO General Insurance Co. Ltd. v. Smt. Lalta Devi & Ors.*,

LOSS OF EARNING CAPACITY

7. Immediately after the accident, the Appellant was removed to Kalyani hospital. The Appellant claimed that because the injuries could not heal at the time of his third surgery, his left leg above knee had to be amputated. He was rendered jobless and had to return to his village. In this connection, it will be appropriate to refer to the testimony of the Appellant from para 3 of the Affidavit Ex.PW-1/A, which reads as under:-

“3. That I was taken to Kalyani Hospital from the spot of accident. After first aid by the doctors of Kalyani Hospital I was referred to Jai Parkash Narayan Apex Trauma Centre, New Delhi. I was admitted in the said hospital on 8.4.2009 and remain admitted there upto 25.4.2009. During this period of hospitalization three major operations were conducted. The first operation was conducted on my left leg and during this period of operation, the bones of the leg were tried to be aligned. The second operation of my right leg was conducted and steel rod and screws were inserted in it. When even after the first operation of my left leg, the wounds were not healed and the condition started further deteriorating then the doctors advised me for the amputation of my left leg. By third operation my left leg above knee was amputated. After operations dressing and plaster

was applied on my right and left leg. After three major operations I was discharged from the hospital with an advise to visit in the hospital for routine check up and dressing. As per the advise of the doctors I continued to visit in the hospital for routine check up and dressing. When after several dressings the wounds were not heeled then I was again advised by the doctors of the hospital for admission. As per the advise of the doctors I was again admitted in the hospital on 30.5.2009 and was discharged on 9.6.2009. During this period of hospitalization skin grafting was conducted by the doctors. The skin of my right leg was taken and the same was applied on my left leg. At the time of discharge from the hospital I was again advised to visit in the hospital for routine check up and dressing. As per the advise of the doctors I continued to visit in the hospital for long period. In all my treatment continued for a period of one year. I was treated by the private doctors also at my native village. Since I was not having sufficient funds, therefore, I was constrained to leave Delhi and to reach my native village.....”

8. Although the Appellant could not produce any evidence with regard to his profession as a driver that is why the Claims Tribunal took the minimum wages of a skilled worker to award the compensation. Even if the Appellant was not qualified to work as a driver, he was expected to work as a menial labourer. In view of this, the loss of earning capacity to my mind for a person who has lost his left limb above knee should be taken as 75%.

9. At the same time, there was no evidence with regard to future prospects. The question of grant of future prospects was dealt with by this Court at great length in *HDFC Ergo General Insurance Co. Ltd. v. Smt. Lalta Devi and Ors.* MAC APP No. 189/ 2014 decided on 12.01.2015. Paras 8 to 21 of the report in *Lalta Devi (supra)* are extracted hereunder:-

“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 *Raghubir 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. (supra) shall be taken as a binding precedent.”

10. Thus, in the absence of any evidence of good future prospects, no addition towards future prospects ought to have been made by the Claims Tribunal.
11. The loss of earning capacity thus comes to Rs.5,66,496/- (3934/- x 12 x 16 x 75%) which is the same as awarded by the Claims Tribunal, although for different reasons.

PAIN AND SUFFERING

12. It is evident that the Appellant had to undergo three successive surgeries in Jai Parkash Narayan Apex Trauma Centre, New

Delhi. He remained as an indoor patient for a long time. In view of this, the compensation of Rs.50,000/- awarded towards pain and suffering is raised to Rs.1,00,000/-.

13. In *Raj Kumar v. Ajay Kumar & Anr.*, 2011 (1) SCC 343, it was laid down that wherever compensation towards loss of earning capacity to the extent of 50% or more is granted, a nominal compensation should be awarded towards loss of amenities in life.
14. The Claims Tribunal in the instant case granted a compensation of Rs.1,00,000/- towards physical disfigurement and loss of amenities of life. I would re-compute the same as Rs.50,000/- towards disfigurement and Rs.50,000/- towards loss of amenities in life.
15. So, the compensation awarded under all heads seems to be just and reasonable except under the head of pain and suffering, which as stated above has been raised from Rs.50,000/- to Rs.1,00,000/-.
16. The enhanced compensation of Rs.50,000/- shall carry interest @ 7.5% per annum from the date of filing of the Claim Petition till its payment.

17. Respondent no.3 Insurance Company is directed to deposit the enhanced compensation along with proportionate interest within four weeks, failing which the Appellant would be entitled to interest @ 12% per annum from the date of this judgment.
18. 50% of the enhanced compensation shall be held in fixed deposit for a period of three years. 50% shall be released on deposit.
19. The appeal is allowed in above terms.
20. Pending applications also stand disposed of.

(G.P. MITTAL)
JUDGE

FEBRUARY 18, 2015
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