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

Date of decision: 5th February, 2015

+ **MAC.APP.467/2012**

BAJAJ ALLIANZ GENERAL INSURANCE CO. LTD..... Appellant

Through: Mr. Priyadarshi Gopal, Adv. for
Ms. Rameeza Hakim, Adv.

versus

SMT. SARLA KATIYAR & ORS Respondents

Through: Mr. Prem Chandra, Adv. for R-1 to
R-4.

+ **MAC.APP.657/2012**

SMT. SARLA KATIYAR & ORS. Appellants

Through: Mr. Prem Chandra, Adv.

versus

SANTOSH SRIVASTAVA & ANR. Respondents

Through: Mr. Priyadarshi Gopal, Adv. for
Ms. Rameeza Hakim, Adv. for R-2.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

G. P. MITTAL, J. (ORAL)

1. These two appeals arise out of judgment dated 25.02.2012 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby compensation of Rs.8,77,073/- was awarded in favour of the Claimants for the death of deceased Babu Lal Katiyar, who died in a motor vehicular accident which occurred on 22.10.2009.

2. Appellant in MAC APP.467/2012 shall be referred to as the Insurance Company whereas Appellants in MAC APP.657/2012 shall be referred to as the Claimants for the sake of convenience.
3. During inquiry before the Claims Tribunal, the Claimants examined PW-2 Sushil Kumar, who was an eye witness to the accident. He testified about the manner of the accident. During evidence it was brought on record that deceased Babu Lal Katiyar was a practicing lawyer in Delhi High Court and Karkardooma Court and he was having an income of Rs.30,000/- per month.
4. In the absence of any authentic proof of the deceased's income, the Claims Tribunal took minimum wages of a graduate, added 50% towards future prospects, deducted 1/4th towards personal and living expenses and applied the multiplier of 13, taking the age of the deceased to be 50 years.
5. The Claims Tribunal further awarded certain amounts towards non-pecuniary damages.
6. The following contentions are raised on behalf of the Insurance Company:-

- (i) In the absence of any evidence with regard to future prospects, no addition was permissible towards the same; and
 - (ii) In case of theft of a vehicle, the Insurance Company has no liability to pay the compensation.
7. On the other hand, learned counsel for the Claimants urges that the assessment of monthly income of deceased Babu Lal Katiyar is not proper and that the compensation awarded is on the lower side.

LIABILITY

8. As far as liability is concerned, the issue is no longer *res integra* in view of the judgment of the Supreme Court in *Skandia Insurance Company Limited v. Kokilaben Chandravadan*, (1987) 2 SCC 654. In a later judgment in *United India Insurance Company Ltd. v. Lehu & Ors.*, (2003) 3 SCC 338, the Supreme Court relied upon the judgment in *Skandia Insurance Company Limited v. Kokilaben Chandravadan* (1987) 2 SCC 654 and *Sohan Lal Passi v. P. Sesh Reddy* (1996) 5 SCC 21 and held that if a vehicle is stolen and the thief is caught and it is ascertained that he had no licence, the Insurance Company cannot avoid the liability. In the instant case also, the negligence has been duly proved. If the vehicle was stolen, the Insurance Company cannot escape the liability.

9. As far as income of the deceased is concerned, it is not in dispute that he was not filing Income Tax Returns. On the date of the accident, any income beyond Rs.1,60,000/- in case of a male, was subject to tax. It is a herculean task to make assessment of income of a person who is practicing law but is not being assessed to income tax and there is no documentary evidence produced with regard to his income. Yet, in order to award loss of dependency, the court will have to make some guess work. In view of this, I will assess the income of deceased Babu Lal Katiyar, who was an Advocate and was practicing in Karkardooma Court to be Rs.12,000/- per month *i.e.* Rs.1,44,000/- per annum.
10. As far as addition towards future prospects is concerned, this Court in *HDFC ERGO General Insurance Co. Ltd. v. Smt. Lalta Devi & Ors.*, MAC. APP. 189/2014 decided on 12.01.2015 dealt with this aspect in great detail. Paras 9 to 21 of the report in *Lalta Devi* are extracted hereunder:-

“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. (surpa) shall be taken as a binding precedent.”

11. 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. The loss of dependency therefore, comes to Rs.14,04,000/- (12,000/- x 12 x 3/4 x 13).
12. In addition, the Claimants will be entitled to a sum of Rs.1,00,000/- each towards loss of love and affection and loss of consortium,

Rs.25,000/- towards funeral expenses and Rs.10,000/- towards loss to estate.

13. The overall compensation thus comes to Rs.16,39,000/-.
14. The compensation is accordingly enhanced by Rs.7,61,927/- which shall carry interest @ 7.5% per annum from the date of filing of the petition till its payment.
15. The enhanced compensation alongwith interest shall be deposited with the Claims Tribunal by the Insurance Company within six weeks.
16. In case of default, the Claimants will be entitled to interest @ 12% per annum from the date of this judgment.
17. 10% each of the enhanced compensation along with proportionate interest shall be payable to Claimants no.2, 3 and 4. Rest 70% along with proportionate interest shall be payable to Claimant no.1.
18. The compensation awarded to Claimants no.2 to 4 shall be held in fixed deposit for a period of two years.
19. 75% of the enhanced compensation awarded to Claimant no.1 shall be held in fixed deposit for a period of two years, four years and six years in equal proportion. Rest shall be released on deposit.

20. The compensation awarded by this Court shall be disbursed in terms of the order passed by the Claims Tribunal.
21. Both the appeals are disposed of in above terms.
22. Pending applications also stand disposed of.
23. Statutory amount, if any, shall also be refunded to the Appellant Insurance Company after deposit of the enhanced compensation and on filing a certificate in this regard with the Registry.

(G.P. MITTAL)
JUDGE

FEBRUARY 05, 2015

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