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

Decided on: 26th February, 2015

+ **MAC.APP. 451/2013**

THE NEW INDIA ASSURANCE CO. LTD.

..... Appellant

Through: Mr.Pankaj Seth, Advocate

versus

SMT ARTI DEVI & ORS

..... Respondents

Through: Ms. Nitika Bhutani, Advocate
for Respondents no.1 to 6.

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 directed against the judgment dated 14.02.2013 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby compensation of Rs.15,41,610/- was awarded in favour of Respondents no.1 to 6 for the death of Rattan Mandal who died in a motor vehicular accident which occurred on 05.09.2012.

2. There is twin challenge to the judgment. First, negligence on the part of the driver of the insured truck bearing no.HR-55E-4131 was not established which was *sine qua non* for the grant of compensation. Second, the compensation awarded is excessive, addition of 50% should not have been made as there was no evidence of bright future prospects.
3. Per contra, the learned counsel for Respondents no.1 to 6 supports the impugned judgment and submits that from the certified copy of the site plan placed on record, the negligence of the truck driver was amply proved. It is stated that in view of the fact that the deceased was an Auto Rickshaw driver, the compensation cannot be considered to be excessive or exorbitant.
4. The Claims Tribunal dealt with the issue of negligence as under:

“10.The burden of proof of this issue was upon the petitioners. In order to prove this fact, the claimants examined Smt. Arti Devi, widow of deceased as PW1. She by virtue of her affidavit stated that the alleged accident took place due to rash and negligent driving of driver of offending vehicle bearing no. HR-55E-

4131 regarding which an FIR No.305/2012 dated 06.09.2012 was registered with police station Safdarjung Enclave, under Section 279/304A IPC against respondent no.1 namely Hari Singh. She was subjected to cross-examination by learned counsel for insurance company and nothing could be brought on record to impeach her veracity. It is relevant to mention that the aforesaid petition is outcome of accident which occurred within the jurisdiction of police station Safderjung Enclave. Investigating Officer has placed on record an FIR along with other relevant documents including identity cards of claimants, affidavit, report u/s 173 Cr. P. C. , site plan, MLC and Postmortem report, motor inspection report, verified insurance policy, driving licence of erring driver, driving licence verification report, RC of offending vehicle, RC verification report, arrest memo, photograph of claimants etc. The postmortem report revealed the cause of death as shock as a result of multiple injuries due to blunt force impact. All injuries are antimortem in nature. The aforesaid documentary evidence reveals that the victim namely Rattan Mandal sustained fatal injuries in motor vehicular accident. Moreover, no evidence whatsoever has been adduced by either of respondents to controvert or to rebut the evidence adduced by petitioners. From un-rebutted oral and documentary evidence, it is established from record that petitioners sustained injuries on account of negligent driving of respondent No.1. Hence, issue no.1 is decided in favour of petitioners.”

5. Unfortunately, the Claims Tribunal was content to hold that the accident was caused on account of the rash and negligent

driving of the truck driver merely on the testimony of Smt. Arti Devi, widow of the deceased. Admittedly, she was not an eye witness to the accident. Her evidence was only in the nature of hearsay evidence. At the same time, the Claims Tribunal was expected to call the eye witness who was mentioned in the criminal case to find out if there was really any negligence on the part of the truck driver.

6. It is borne out from the record that the truck driver was prosecuted under Section 279/304-A IPC. However, that itself may not be sufficient to reach a finding of negligence on the part of the truck driver. But, there is an important document in the shape of site plan which shows that the truck struck TSR no.DL-1RE-7072 at point 'A'. The TSR was found at point 'B' and the truck stopped at point 'C'. The distance between point 'A' and 'C' is 35 ft and the distance between point 'A' and 'B' is 15 ft. The rash and negligence is writ large as the truck driver could not even stop the truck after the impact for long 35 ft. It is evident that the truck was being driven on an uncontrollable speed and in a negligent manner. It may be

noted that in a claim petition under Section 166 of the Motor Vehicles Act, 1988, negligence is required to be proved on the touchstone of preponderance of probability. In my view, negligence for that purpose has been sufficiently established.

7. It is the case of Respondents no.1 to 6 that the deceased used to ply an Auto Rickshaw, he would hire it on rent at the rate of Rs.250/- per day and earn Rs.17,000/- a month. The testimony of Arti Devi that the deceased was an Auto Rickshaw driver was not challenged in cross-examination. The widow of the deceased was cross-examined at length by the learned counsel for the Appellant Insurance Company about his profession and income. In fact, as many as 26 questions were put to the widow (PW-1) of the deceased on this aspect. PW-1 was able to give the licence number, the badge number and the PSV driver badge number. The witness stated that her husband would drive the auto every day for about 150 to 200 kms and would earn Rs.600/- to Rs.700/- per day. In cross-examination, she went on to add that it was a CNG auto(TSR). In view of this, instead of computing the loss of dependency upon minimum wages of a

skilled worker, the Claims Tribunal ought to have made an assessment of the earning by an auto driver, particularly when PW-1 was cross-examined at length in this regard. Thus, assuming that a sum of Rs.200-250/- was spent on purchase of CNG, the net income of the deceased was Rs.400/- per day and on 25 days of working, it would be Rs.10,000/- per month.

8. The Claims Tribunal on the basis of *Santosh Devi v. National Insurance Company Ltd. & Ors.*, 2012 (4) SCALE 559 made addition of 30% towards future prospects. The three Judge Bench decision of the Supreme Court in *Reshma Kumari & Ors. v. Madan Mohan & Anr.*, (2013) 9 SCC 65 affirmed the judgment of *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121 to hold that addition towards future prospects is permissible only when there is evidence with regard to bright future prospects.
9. The question of grant of future prospects was also 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 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. (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. The loss of dependency therefore, comes to Rs.13,50,000/-(Rs.10,000/- x 12 x 3/4 x 15).
11. In addition, in view of the judgment in *Rajesh & Ors. v. Rajbir Singh & Ors., (2013) 9 SCC 54*, I further award 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.
12. The overall compensation therefore, comes to Rs.15,85,000/-.

13. Thus, the award granted by the Claims Tribunal cannot be said to be exorbitant and excessive.
14. The appeal therefore, has to fail; the same is accordingly dismissed.
15. Pending applications, if any, also stand disposed of.
16. Statutory amount, if any, deposited shall be refunded to the Appellant Insurance Company.

(G.P. MITTAL)
JUDGE

FEBRUARY 26, 2015
pst