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

*Decided on: 28<sup>th</sup> May, 2015*

+ **MAC. APP. 591/2012**

**BAJAJ ALLIANZ GENERAL INSURANCE CO. LTD.**

..... Appellant

Through: Mr. Rajat Brar, Advocate

versus

**VIRENDER AND ORS.**

..... Respondents

Through: Mr. S.N. Parashar, Advocate for  
R-1.

**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 reduction of compensation of Rs. 3,33,698/- awarded by the Motor Accident Claims Tribunal (the Claims Tribunal) in favour of Respondent no.1 for having suffered grievous injuries resulting in 20% permanent disability of right lower limb in a motor vehicular accident which occurred on 29.12.2006.
2. The finding on negligence is not challenged by the Appellant Insurance Company.
3. The following contentions are raised on behalf of the Appellant Insurance Company:
  - (i) The Claims Tribunal made an addition of 50% towards

future prospects while computing the loss of future earning capacity. The same is not permissible in view of the three Judge Bench decision of the Supreme Court in *Reshma Kumari Aand Ors. v. Madan Mohan and Anr.*, (2013) 9 SCC 65 and the judgment of this Court in *HDFC Ergo General Insurance Co. Ltd. v. Smt. Lalita Devi and Ors.*, MAC APP No. 189/2014, decided on 12.01.2015;

- (ii) Respondent no.1 was claimed to be running a milk dairy and also working as an agriculturist. His income was assessed on the basis of minimum wages of a semi-skilled worker and the loss of earning capacity was taken to the extent of 20%. However, considering the permanent disability, the functional disability assessed was much less. The Claims Tribunal was not justified in awarding a sum of Rs. 1,87,812/- towards loss of future income; and
- (iii) The counsel's fee of Rs. 25,000/- was directly awarded to the counsel, which is not in accordance with the Delhi High Court Rules and Orders. Reliance is placed on the judgment of this Court in *ICICI Lombard General Insurance Co. Ltd. v. Kanti Devi and Ors.*, MAC APP No. 645/2012, decided on 30.07.2012.

- 4. On the other hand, the learned counsel for Respondent no.1 supports the impugned judgment. He states that the compensation awarded is just and reasonable as the compensation awarded towards non-pecuniary damages is on

the lower side. The learned counsel for Respondent no.1, however, states that the counsel's fee in the manner as done by the Claims Tribunal was not permissible.

5. The compensation awarded under various heads is extracted hereunder:

| <b>Sl. No.</b> | <b>Compensation under various Heads</b>              | <b>Awarded by the Claims Tribunal (in Rs.)</b> |
|----------------|------------------------------------------------------|------------------------------------------------|
| 1.             | Medical Bills                                        | 31,572/-                                       |
| 2.             | Future Medical Expenses                              | 10,000/-                                       |
| 3.             | Special Diet                                         | 7,000/-                                        |
| 4.             | Conveyance Charges                                   | 7,000/-                                        |
| 5.             | Loss of Income                                       | 10,434/-                                       |
| 6.             | Loss of Future Income                                | 1,87,812/-                                     |
| 7.             | Loss of Amenities and Shortening of Life             | 40,000/-                                       |
| 8.             | Pain, Shock, Suffering and Inconvenience <i>etc.</i> | 40,000/-                                       |
|                | <b>TOTAL</b>                                         | <b>3,33,698</b>                                |

6. However, there seems to be a clerical mistake in calculating the total as Rs. 333698/- is mentioned, whereas the total compensation comes to Rs. 3,33,818/-.

#### **ADDITION TOWARDS FUTURE PROSPECTS**

7. During inquiry before the Claims Tribunal, Respondent no.1 claimed that he was running a milk dairy and also working as an agriculturist and from the same he used to earn Rs. 10,000/- per month. In the absence of any evidence with regard to Respondent no.1's income, the Claims Tribunal took the minimum wages of an semi-skilled worker as Rs. 3,478/- per

month. The same does not call for any interference. As far as addition of future prospects is concerned, admittedly there was no evidence with regard to claimant's good future prospects.

8. 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 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.”*

9. As stated above, in the absence of any evidence of good future prospects, addition of 50% was not permissible. Thus, no addition towards future prospects ought to have been made by the Claims Tribunal.

### **FUNCTIONAL DISABILITY**

10. Respondent no.1, Virender examined himself before the Claims Tribunal as PW1. He testified that he received serious and grievous injuries in the accident on various parts of body *i.e.* compound fracture on right leg, injuries on back side, abrasions and blunt injuries all over the body. The disability certificate Ex. PW1/3 which was proved by Dr. S.P. Sharma (PW2) states that on account of malunited fracture of lower end of right femur with stiffness of right knee joint, Respondent no.1 suffered 20% permanent disability in respect of right lower limb. Respondent no.1's profession of running a milk dairy and of an agriculturist was not disputed. It is therefore, evident that Respondent no.1 in connection with carrying out his duties, has to walk, kneel and walk to various places. PW2 testified that on account of permanent disability, though Respondent no.1 can do sitting job properly, but his earning capacity will be effected if

he is given the job of moving from one place to another or to carry heavy weight. Thus, taking into consideration Respondent no.1's profession, the Claims Tribunal was justified in taking 20% as functional disability. The loss of earning capacity therefore, in view of the observations made earlier would come to Rs. 1,33,555/- (Rs.3,478 x 12 x 16 x 20%).

11. Respondent no.1 was aged 35 years. As stated earlier, he was running a milk dairy and was also doing agriculture. He will have difficulty in running, squatting, kneeling. His job will be hampered badly due to the injuries suffered. Thus, the compensation of Rs. 7,000/- each towards Special Diet and conveyance charges and Rs. 40,000/- each towards loss of amenities and pain and suffering seems to be on the lower side. The same is hence, raised to Rs. 20,000 each and 50,000/- each respectively.

12. The overall compensation is thus, recomputed as under:

| <b>Sl. No.</b> | <b>Compensation under various Heads</b>     | <b>Awarded by the Claims Tribunal (in Rs.)</b> | <b>Awarded by this Court (in Rs.)</b> |
|----------------|---------------------------------------------|------------------------------------------------|---------------------------------------|
| 1.             | Medical Expenses                            | 31,572/-                                       | 31,572/-                              |
| 2.             | Future Medical Expenses                     | 10,000/-                                       | 10,000/-                              |
| 3.             | Special Diet                                | 7,000/-                                        | 20,000/-                              |
| 4.             | Conveyance Charges                          | 7,000/-                                        | 20,000/-                              |
| 5.             | Loss of Income                              | 10,434/-                                       | 10,434/-                              |
| 6.             | Loss of Future Income                       | 1,87,812/-                                     | 1,33,555/-                            |
| 7.             | Loss of Amenities and Shortening of Life    | 40,000/-                                       | 50,000/-                              |
| 8.             | Pain, Suffering & Inconvenience <i>etc.</i> | 40,000/-                                       | 50,000/-                              |
|                | <b>TOTAL</b>                                | <b>3,33,818/-</b>                              | <b>3,25,561/-</b>                     |

13. Thus, the compensation of Rs. 3,33,698/- as awarded by the Claims Tribunal, in my opinion, cannot be said to be excessive or exorbitant in view of the circumstances detailed earlier.

### **COUNSEL'S FEE**

14. As far as award of Counsel's Fee of Rs. 25,000/- is concerned, this Court in *ICICI Lombard General Insurance Co. Ltd. v. Kanti Devi and Ors.*, MAC APP No. 645/ 2012, decided on 30.07.2012 had gone into the question of granting counsel's fee and concluded in Para 32 as under:

*"32. To sum up, it is directed:-*

- i. The Claims Tribunal is empowered to award costs in a Claim Petition in terms of Section 35 read with Order XXA of the Code.*
- ii. The Claims Tribunal is entitled to award the Counsel's fee in accordance with Rule 1 read with Rule 1A and Rule 9 of Chapter 16 Volume I of the Rules extracted earlier.*
- iii. In case of compromise/settlement of the claims, the Claims Tribunal is not entitled to go beyond the settlement reached between the parties. If the settlement does not provide for payment of any Counsel's fee, it shall not be within the domain of the Claims Tribunal to award the Counsel's fee.*
- iv. If the compensation is awarded on the basis of DAR in pursuance of the legal offer made by the Insurer, the Claims Tribunal is not*

*empowered to award any costs unless it forms part of the legal offer.*

- v. *The counsel fee can be directly paid to the counsel only when a specific agreement is filed and the Claimant requires payment of fee directly to the counsel because only then the Claimant would be liable to reimburse the fee or part thereof in case the award is set aside or varied.’’*

15. It was thus, concluded that instead of awarding counsel's fee, the claim petition ought to be allowed with costs and counsel's fee be paid only in accordance with Rules 1, 1A and 9 of Chapter 16 Vol. I of the Delhi High Court Rules and Orders.
16. The learned counsel for Respondent no.1 as stated above, does not dispute that the Counsel's Fee in the manner awarded by the Claims Tribunal was not permissible. At the most, the petition could have been allowed with costs. The award of Counsel's Fee is accordingly set aside.
17. By an order dated 25.05.2012, the execution of the award was stayed, subject to deposit of 60% of the award amount. The balance 40% of the award amount along with interest shall be deposited with UCO Bank, Delhi High Court Branch, New Delhi within six weeks, failing which Respondent no.1 will be entitled to interest @ 12% per annum from the date of this order.
18. By the order dated 25.05.2012, 50% of the award amount was ordered to be released in favour of Respondent no.1. The entire balance amount already deposited shall be released in favour of

Respondent no.1.

19. The remaining 40% of the amount along with interest which is to be deposited by the Appellant shall be held in Fixed Deposits for a period of two, four, and six years in equal proportion. On this amount, Respondent no.1 shall be entitled to claim quarterly interest. The FDRs shall be released to Respondent no.1 on maturity of their earlier said period.
20. The appeal is disposed of in above terms.
21. The statutory amount, if any, deposited shall be refunded to the Appellant Insurance Company.
22. Pending applications, if any, stand disposed of.

**(G.P. MITTAL)**  
**JUDGE**

**MAY 28, 2015**

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