

\$-10

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 20th February, 2015

+

MAC.APP. 471/2014

THE ORIENTAL INSURANCE CO LTD

..... Appellant

Through: Mr. A.K. Soni Raman,
Advocate

versus

SMT. MANURA & ORS

..... Respondents

Through: Mr. S.N. Parashar, Advocate for
Respondents 1 to 4.

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 11.03.2014 passed by the Motor Accident Claims Tribunal(the Claims Tribunal) whereby compensation of Rs.9,94,456/- was awarded in favour of Respondents no.1 to 4 for the death of Surju @ Subhan who died in a motor vehicular accident which occurred on 03.12.2007.
2. During inquiry before the Claims Tribunal, it was claimed that the deceased was working as a cook in a hotel at Bhogal and was earning Rs.8,000/- to Rs.10,000/- per month. On

appreciation of evidence, the Claims Tribunal found that the accident was caused because of rash and negligent driving of bus no.DL-1PA-2917 by its driver. In the absence of any proof with regard to the deceased's income, the Claims Tribunal took the minimum wages of an unskilled worker, deducted 1/4th towards personal and living expenses and applied the multiplier of 16 to compute the loss of dependency. The Claims Tribunal further awarded 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.

3. It is urged by the learned counsel for the Appellant that the claimants have failed to prove negligence on the part of the driver of the offending bus and thus, liability was wrongly fastened upon the owner of the bus and consequently upon the Appellant Insurance Company. It is stated that although in the absence of any evidence with regard to the deceased's income, the Claims Tribunal took minimum wages, yet addition of 50% towards future prospects without any evidence for the same was not permissible. Reliance is placed upon a three Judge Bench decision of the Supreme Court in *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. Lalita Devi and Ors.* MAC APP No. 189/ 2014 decided on 12.01.2015.
4. On the other hand, the learned counsel for Respondents no.1 to 4 submits that since the deceased was working as a cook, at

least minimum wages of a skilled worker ought to have been taken to compute the loss of dependency. It is stated that negligence was amply proved by the Respondents by examining Mohd. Aman(PW-2), an eye witness to the accident.

NEGLIGENCE:

5. While dealing with the question of negligence, the Claims Tribunal referred to the testimony of Mohd. Aman(PW-2), an eye witness of the accident and also the statement of Neeraj Kumar, driver of the offending bus. The relevant portion of the impugned judgment is extracted hereunder:

“.....In order to prove this issue, the learned counsel for the petitioners has relied upon the statement of PW2, Mohd Aman who has averred that on 03.12.2007 at about 10.30 PM, he alongwith Mohd Raju and Mohd Subhan @ Chhotu were going towards Basti Hazarat Nizamuddin from their house on motorcycle bearing registration No. DL9SN2711 which was driven by Mohd Subhan @ Chhotu and when they had reached under the Lodhi Colony Red Light and were crossing the traffic intersection on green signal when the offending vehicle i.e. bus bearing registration No. DL1PA2917 plying on route No. 405 driven at a very high speed, rashly and negligently and without caring for the rules of traffic came and hit their motorcycle due to which they fell down on the road and received grievous injuries. He has further averred that some public person had telephoned the police which reached at the place of accident and removed them to the Trauma Center and that Mohd Subhan @ Chhotu died in the hospital because of the injuries sustained by him in this accident. He has also averred that a FIR No. 674/07

under Section 279/338/304A IPC was registered against the driver of DL1PA2917 at PS Hazarat Nizamuddin, New Delhi. This witness was crossexamined by the counsels for R2 and R3 and he stated that he had shifted from Jhuggis of Viklang Colony near Nehru Stadium, Lodhi Colony Temporary Huts in the year 2008 as the said jhuggis were demolished and he had shifted to Punarnivas Colony, Narela, Delhi. He has also categorically stated that the offending bus had jumped the red light and hit their motorcycle. He also stated that he had seen the driver of the offending bus after the accident. R2W1, Shri Neeraj Kumar has filed his evidence affidavit, Ex. R2W1/A and has averred that he was falsely implicated in this case and that he was never the employee of the owner of the offending bus No. DL1PA2917. He has further averred that the owner had also admitted in his reply to notice under Section 133 of MV Act that the bus was driven by Shri Sushil Kumar S/o Malik Shah. He has also averred that he was acquitted on 23.02.2013 by the Court of Ms Namrata Aggarwal, MM, Saket Court, New Delh. However, R2W1, Shri Neeraj Kumar has admitted during his crossexamination on 05.02.2014 that he was arrested by the police in FIR No. 674/07, PS Hazarat Nizamuddin and later on got the bail from the concerned court. He has also admitted that he had not made any complaint to senior police officials regarding his false implication in the aforementioned FIR. He has also admitted his signatures on the statement dated 03.11.2010, Ex. R2W1/X recorded before the Court of Ms Poorva Sareen, MM, Saket Court, New Delhi wherein he had stated that he has no objection if the photograph of the bus in question is taken on record and he will not raise any identity dispute of the bus if it will not be produced before the court at the time of recording of evidence. The Ld counsel for the respondent No. 2 has argued that

although the respondent No. 2, Shri Neeraj was arrested and charge sheet had been filed against him but respondent No. 2 has already been acquitted of the charges under Section 279/337/338/304A IPC in FIR No. 647/07, PS Hazarat Nizamuddin from the Court of Ms Saumya Chauhan, Ld MM07/SE/ Saket Courts, New Delhi vide Judgment dated 23.02.2013. However, standard of proof of negligence required in order to dispose off the compensation claim stands on a much lesser footing than what is required in a criminal case or in a civil case”

6. It may be noted that Neeraj Kumar, driver of the bus has completely denied the involvement of the bus in the accident. At the same time, he admitted that he was arrested by the police and was later on released on bail. He also admitted that he did not file any complaint against the police for wrongful arrest.
7. There was no reason for PW-2 to have falsely implicated Neeraj Kumar as the person responsible for the accident. All the more, if bus no. DL-1PA-2917 was not at all involved in the accident, the driver as well as the owner would have definitely lodged their grievance against the police for wrongful accusation. It is true that Respondent Neeraj Kumar was acquitted in the criminal case, yet the standard of proof required for award of compensation under Section 166 of the Motor Vehicles Act, 1988(the Act) is much lesser than in a criminal case. In the instant case, negligence has to be proved on the touchstone of preponderance of probabilities. I do not see any reason to

disbelieve PW-2 and hold that the involvement and negligence of the driver of bus no. DL-1PA-2917 in the accident has been sufficiently established.

COMPENSATION:

8. As far as award of compensation is concerned, PW1's (Smt. Manura) testimony that the deceased was working as a cook in a hotel was not challenged in cross-examination. Although, no documentary evidence with regard to the income of deceased was produced, the Respondents could have summoned a witness from the concerned hotel to depose about the salary being paid to the deceased. In view of this, instead of accepting the income of Rs.8,000/- per month as claimed by the Respondents, I am inclined to take minimum wages of a skilled worker to compute the loss of dependency.
9. 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 [Sarala 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. The loss of dependency thus, comes to Rs.5,67,360/-(Rs.3,940/- x 12 x 3/4 x 16).

11. The compensation towards non pecuniary damages awarded by the Claims Tribunal is in conformity with a three Judge Bench decision of the Supreme Court in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54. Hence, I see no reason to interfere with the same.
12. The overall compensation thus, comes to Rs.8,02,360/-.
13. The excess amount of Rs.1,92,096/- along with proportionate interest and the interest accrued during the pendency of the appeal shall be refunded to the Appellant Insurance Company.
14. The compensation payable along with proportionate interest shall be held in Fixed Deposit/released in terms of the orders passed by the Claims Tribunal.
15. Pending applications stand disposed of.
16. Statutory amount, if any, deposited shall be refunded to the Appellant Insurance Company.

(G.P. MITTAL)
JUDGE

FEBRUARY 20, 2015

pst