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

Date of decision: 23rd April, 2015

+ **MAC.APP. 698/2012**

RELIANCE GEN INS CO LTD

..... Appellant

Through: Mr. Shoumik Mazumdar, Adv.

versus

NAGESHWAR MISHRA & ORS.

..... Respondents

Through: Mr. Satish Kumar Adv. for R-1 & R-2
along with R-1 & R-2 in person.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

G. P. MITTAL, J. (ORAL)

1. The appeal is for reduction of compensation of ₹6,13,652/- awarded in favour of Respondents no.1 and 2 for the death of their bachelor son Sanjay Mishra, who suffered fatal injuries in a motor vehicular accident which occurred on 14.11.2008.
2. During inquiry before the Claims Tribunal it was claimed that the deceased was doing private service and was getting a salary of ₹7,000/- per month. It was also claimed that the accident was caused on account of rash and negligent driving of the car bearing registration no.HR-51-V-0258.

3. On appreciation of evidence, the Claims Tribunal found that the accident was caused on account of rash and negligent driving of the car bearing registration no. HR-51-V-0258 by its driver Rupender Singh.
4. In the absence of any cogent evidence with regard to deceased's income, the Claims Tribunal took the minimum wages of an unskilled worker, added 50% towards inflation and adopted a multiplier of 17 to compute the loss of dependency as ₹5,63,652/-.
5. The Claims Tribunal further awarded a sum of ₹50,000/- towards non-pecuniary damages to compute the overall compensation of ₹6,13,652/-.
6. It is urged by the learned counsel for the Appellant that in the absence of any evidence with regard to good future prospects, addition towards future prospects was not permissible. Addition towards inflation is also not permissible as it is built in the multiplier. Reliance is placed on *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121 and a three Judge Bench decision of the Supreme Court in *Reshma Kumari & Ors. v. Madan Mohan & Anr.*, (2013) 9 SCC 65.

7. On the other hand, learned counsel for Respondents no.1 and 2 states that the compensation awarded is just and reasonable and does not call for any interference.

FUTURE PROSPECTS

8. As far as addition towards future prospects is concerned, the question was dealt with at great length by this Court in *HDFC Ergo General Insurance Co. Ltd. v. Smt. Lalta Devi and Ors.*, MAC APP No.189/2014 decided on 12.01.2015. It was held that in the absence of any evidence with regard to better future prospects, addition towards future prospects is not permissible. 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: (Sarala Verma case [Sarala 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.”

9. Admittedly, there was no evidence with regard to good future prospects. Addition of 50% towards future prospects/inflation was therefore, not permissible.

MULTIPLIER

10. With regard to selection of multiplier in case of a bachelor, the issue was examined at great length by this Court in *Shriram General Insurance Co. Ltd. v. Maneesha Karnatak and Ors.*, MAC APP 655 of

2014 decided on 20.03.2015 wherein Paras 10 to 34, it was held as under:

“10.the question of selection of multiplier was dealt with at great length by me in Vijay Laxmi & Anr. v. Binod Kumar Yadav & Ors., ILR (2012) 6 Del 447. In that case, the learned counsel for the Appellant had relied on the following judgments (i) Smt. Sarla Verma & Ors. v. Delhi Transport Corporation & Anr., 2009 (6) SCC 121; (ii) Mohd. Ameeruddin v. United India Insurance Co. Ltd., 2010 (12) SCALE 155; (iii) P.S. Somanathan v. District Insurance Officer, I (2011) ACC 659 (SC); (iv) Bilkish v. United India Insurance Co. Ltd. & Anr., 2008 (4) SCALE 25; (v) National Insurance Co. Ltd. v. Azad Singh & Ors., 2010 ACJ 2384 (SC); (vi) Oriental Insurance Co. Ltd. v. Deo Patodi & Ors., 2009 ACJ 2359 (SC) and (vii) Divisional Manager, New India Assurance Co. Ltd. v. T. Chelladurai & Ors., 2010 ACJ 382 (SC).

11. I had discussed the law laid down in the earlier stated judgments and had further referred to the judgments in General Manager, Kerala State Road Transport Corporation, Trivandrum v. Susamma Thomas (Mrs.) and Ors., (1994) 2 SCC 176; U.P. SRTC v. Trilok Chandara, (1996) 4 SCC 362; Fakeerappa v. Karanataka Cement Pipe Factory, (2004) 2 SCC 473 and New India Assurance Company Limited v. Shanti Pathak (Smt.) & Ors., (2007) 10 SCC 1 to hold that the multiplier has to be selected as per the age of the deceased or the Claimant whichever is higher.

12. The learned counsel for Respondents No. 1 and 2 has submitted that in view of the three Judge Bench decision in Reshma Kumari v. Madan Mohan & Anr., (2009) 13 SCC 422 and a later judgment of the Supreme Court in M. Mansoor & Anr. v. United India Insurance Company Limited & Anr., (2013) 15 SCC 603, the judgment in Vijay

Laxmi (supra) of this Court needs to be revisited and the multiplier has to be as per the age of the deceased and age of the Claimant is not at all relevant for selection of the multiplier.

13. Section 168 of the Motor Vehicles Act, 1988 (the Act) enjoins a Claims Tribunal to determine the amount of compensation which is just and reasonable. It can neither be a source of profit nor should be a pittance. In other words, it should not be meager nor should be a windfall. In this connection, a reference may be made to the report of the Supreme Court in *State of Haryana v. Jasbir Kaur*, (2003) 7 SCC 484, which dealt with the grant of compensation in case of injury which principles equally apply in case of award of compensation in fatal accident cases. In Para 7, the Supreme Court held as under:

“7. It has to be kept in view that the Tribunal constituted under the Act as provided in Section 168 is required to make an award determining the amount of compensation which is to be in the real sense ‘damages’ which in turn appears to it to be ‘just and reasonable’. It has to be borne in mind that compensation for loss of limbs or life can hardly be weighed in golden scales. But at the same time it has to be borne in mind that the compensation is not expected to be a windfall for the victim. Statutory provisions clearly indicate that the compensation must be ‘just and it cannot be a bonanza; not a source of profit; but the same should not be a pittance. The courts and tribunals have a duty to weigh the various factors and quantify the amount of compensation, which should be just. What would be ‘just’ compensation is a vexed question. There can be no golden rule applicable to all cases for measuring the value of human life or a limb. Measure of damages cannot be arrived at by precise mathematical calculations. It would depend upon the particular facts and circumstances, and attending peculiar or special features, if any. Every method or mode adopted for assessing compensation has to be

considered in the background of 'just' compensation which is the pivotal consideration. Though by use of the expression 'which appears to it to be just' a wide discretion is vested in the Tribunal, the determination has to be rational, to be done by a judicious approach and not the outcome of whims, wild guesses and arbitrariness. The expression 'just' denotes equitability, fairness and reasonableness, and non-arbitrary. If it is not so it cannot be just."

14. Initially, the trend of the Courts was to ascertain the life expectancy, deduct the age of the deceased and to award the compensation on the basis of the residual life span. The Courts started deducting certain sums out of the sum as arrived above on account of lump sum payment.

15. However, in General Manager, Kerala State Road Transport Corporation, Trivandrum v. Susamma Thomas (Mrs.) and Ors., (1994) 2 SCC 176, an attempt was made for the first time to award just and reasonable compensation on the basis of the multiplier method. The Supreme Court referred to the report in Gobald Motor Service Ltd. & Anr. v. R.M.K. Veluswami & Ors., AIR 1962 SC 1 and observed that actual pecuniary loss can be ascertained only by balancing, on one hand, the loss to the Claimant of the future pecuniary benefits and on the other hand, any pecuniary advantage which from whatever sources comes to them by reason of death. Paras 8 and 9 of the report in Susamma Thomas (Mrs.) (supra) are extracted hereunder:-

"8. The measure of damage is the pecuniary loss suffered and is likely to be suffered by each dependant. Thus "except where there is express statutory direction to the contrary, the damages to be awarded to a dependant of a deceased person under the Fatal Accidents Acts must take into account any pecuniary benefit accruing to that dependant in consequence of the death of the deceased. It is the net loss on balance which constitutes the measure of damages."

(Per Lord Macmillan in Davies v. Powell [(1942) AC 601, 617 : (1942) 1 All ER 657 (HL)].) Lord Wright in the same case said, “The actual pecuniary loss of each individual entitled to sue can only be ascertained by balancing on the one hand the loss to him of the future pecuniary benefit, and on the other any pecuniary advantage which from whatever source comes to him by reason of the death”. These words of Lord Wright were adopted as the principle applicable also under the Indian Act in Gobald Motor Service Ltd. v. R.M.K. Veluswami [AIR 1962 SC 1 : (1962) 1 SCR 929 : 1962 MLJ (Cri) 120] where the Supreme Court stated that the general principle is that the actual pecuniary loss can be ascertained only by balancing on the one hand the loss to the claimants of the future pecuniary benefit and on the other any pecuniary advantage which from whatever source comes to them by reason of the death, that is, the balance of loss and gain to a dependant by the death, must be ascertained.

9. *The assessment of damages to compensate the dependants is beset with difficulties because from the nature of things, it has to take into account many imponderables, e.g., the life expectancy of the deceased and the dependants, the amount that the deceased would have earned during the remainder of his life, the amount that he would have contributed to the dependants during that period, the chances that the deceased may not have lived or the dependants may not live up to the estimated remaining period of their life expectancy, the chances that the deceased might have got better employment or income or might have lost his employment or income altogether.”*

16. *The Supreme Court referred to Davies v. Powell, (1942) AC 601 and Nance v. British Columbia Electric Railway Company Limited, (1951) AC 601 and in Paras 13 and 14 of the report in Susamma Thomas (Mrs.) (supra), the Supreme Court observed as under:-*

“13. The multiplier method involves the ascertainment of the loss of dependency or the multiplicand having regard to the circumstances of the case and capitalizing the multiplicand by an appropriate multiplier. The choice of the multiplier is determined by the age of the deceased (or that of the claimants whichever is higher) and by the calculation as to what capital sum, if invested at a rate of interest appropriate to a stable economy, would yield the multiplicand by way of annual interest. In ascertaining this, regard should also be had to the fact that ultimately the capital sum should also be consumed-up over the period for which the dependency is expected to last.

14. The considerations generally relevant in the selection of multiplicand and multiplier were adverted to by Lord Diplock in his speech in Mallett case [Mallett v. McMonagle, (1970) AC 166 : (1969) 2 All ER 178 (HL)] where the deceased was aged 25 and left behind his widow of about the same age and three minor children. On the question of selection of multiplicand Lord Diplock observed:

“The starting point in any estimate of the amount of the ‘dependency’ is the annual value of the material benefits provided for the dependants out of the earnings of the deceased at the date of his death. But ... there are many factors which might have led to variations up or down in the future. His earnings might have increased and with them the amount provided by him for his dependants. They might have diminished with a recession in trade or he might have had spells of unemployment. As his children grew up and became independent the proportion of his earnings spent on his dependants would have been likely to fall. But in considering the effect to be given in the award of damages to possible variations in the dependency there are two factors to be borne in mind. The first is that the more remote in the future is the anticipated change the less confidence there can be in the chances of its occurring and

the smaller the allowance to be made for it in the assessment. The second is that as a matter of the arithmetic of the calculation of present value, the later the change takes place the less will be its effect upon the total award of damages. Thus at interest rates of 4½ per cent the present value of an annuity for 20 years of which the first ten years are at £ 100 per annum and the second ten years at £ 200 per annum, is about 12 years' purchase of the arithmetical average annuity of £ 150 per annum, whereas if the first ten years are at £ 200 per annum and the second ten years at £ 100 per annum the present value is about 14 years' purchase of the arithmetical mean of £ 150 per annum. If therefore the chances of variations in the 'dependency' are to be reflected in the multiplicand of which the years' purchase is the multiplier, variations in the dependency which are not expected to take place until after ten years should have only a relatively small effect in increasing or diminishing the 'dependency' used for the purpose of assessing the damages. ””

17. The purpose of adopting the multiplier as per the age of the deceased or as per the age of the Claimant whichever is higher was that if the Claimant is of much higher age, particularly in case of death of a bachelor where the mother or for that matter the parents may be double the age of the deceased, the dependency is to come to an end in a much lesser period as against the dependency of a widow or minor children of a deceased. In any case, the deceased was not to support more than his own life span and thus, by providing the dependency to the Claimants, it was held that the dependency has to be as per the age of the deceased or the Claimant whichever is higher.

18. The law laid down in Susamma Thomas (Mrs.) (supra) with regard to adoption of multiplier method and selection of multiplier according to the age of the deceased or the Claimant whichever is higher was affirmed by a three Judge Bench decision in U.P. SRTC v. Trilok Chandra,

(1996) 4 SCC 362. The three Judge Bench laid down that the multiplier cannot in all cases be solely dependant on the age of the deceased and the age of the parents would also be relevant in case of death of a bachelor in the choice of multiplier. In para 18 of the report of the Supreme Court in Trilok Chandra (supra), it was observed as under:-

“18..... Besides, the selection of multiplier cannot in all cases be solely dependant on the age of the deceased. For example, if the deceased, a bachelor, dies at the age of 45 and his dependants are his parents, age of the parents would also be relevant in the choice of the multiplier.....”

19. There was some confusion as to the selection of the multiplier because of the multiplier table as given in the Second Schedule of the Act under Section 163-A which was inserted w.e.f. 14.11.1994. Some of the cases had adopted the multiplier as given in the Second Schedule. Although, the three Judge Bench in Trilok Chandra (supra) had noticed some clerical mistakes in the multiplier table as given in the Second Schedule, it stated that the said table can be taken as a guide. Noticing the wide variations in the selection of multiplier, a two Judge Bench of the Supreme Court in Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr., (2009) 6 SCC 121 noted the multiplier as adopted in Susamma Thomas, Trilok Chandra and New India Assurance Company Limited v. Charlie & Anr. (2005) 10 SCC 720 and in the Second Schedule and in Para 40 of the report, it compared the same in a tabulated form which is extracted hereunder:-

Age of the deceased	Multiplier scale as envisaged in Susamma Thomas [(1994) 2 SCC 176 : 1994 SCC (Cri) 335]	Multiplier scale as adopted by Trilok Chandra [(1996) 4 SCC 362]	Multiplier scale in Trilok Chandra ⁴ as clarified in Charlie [(2005) 10 SCC 720 : 2005 SCC (Cri) 1657]	Multiplier specified in Second Column in the Table in Second Schedule to the MV Act	Multiplier actually used in Second Schedule to the MV Act (as seen from the quantum of compensation)
(1)	(2)	(3)	(4)	(5)	(6)
Up to 15 yrs	-	-	-	15	20
15 to 20 yrs	16	18	18	16	19
21 to 25 yrs	15	17	18	17	18

26 to 30 yrs	14	16	17	18	17
31 to 35 yrs	13	15	16	17	16
36 to 40 yrs	12	14	15	16	15
41 to 45 yrs	11	13	14	15	14
46 to 50 yrs	10	12	13	13	12
51 to 55 yrs	9	11	11	11	10
56 to 60 yrs	8	10	09	8	8
61 to 65 yrs	6	08	07	5	6
Above 65 yrs	5	05	05	5	5

20. *The Supreme Court with a view to having a uniform multiplier held that the multiplier as given in Column (4) of the above table should be usually followed. In Paras 41 and 42 of the report in Sarla Verma (Smt.), the Supreme Court observed:-*

“41. Tribunals/ courts adopt and apply different operative multipliers. Some follow the multiplier with reference to Susamma Thomas [(1994) 2 SCC 176 : 1994 SCC (Cri) 335] [set out in Column (2) of the table above]; some follow the multiplier with reference to Trilok Chandra [(1996) 4 SCC 362] , [set out in Column (3) of the table above]; some follow the multiplier with reference to Charlie [(2005) 10 SCC 720 : 2005 SCC (Cri) 1657] [set out in Column (4) of the table above]; many follow the multiplier given in the second column of the table in the Second Schedule of the MV Act [extracted in Column (5) of the table above]; and some follow the multiplier actually adopted in the Second Schedule while calculating the quantum of compensation [set out in Column (6) of the table above]. For example if the deceased is aged 38 years, the multiplier would be 12 as per Susamma Thomas [(1994) 2 SCC 176 : 1994 SCC (Cri) 335], 14 as per Trilok Chandra [(1996) 4 SCC 362], 15 as per Charlie [(2005) 10 SCC 720 : 2005 SCC (Cri) 1657], or 16 as per the multiplier given in Column (2) of the Second Schedule to the MV Act or 15 as per the multiplier actually adopted in the Second Schedule to the MV Act. Some tribunals, as in this case, apply the multiplier of 22 by taking the balance years of service with reference to the

retiring age. It is necessary to avoid this kind of inconsistency. We are concerned with cases falling under Section 166 and not under Section 163-A of the MV Act. In cases falling under Section 166 of the MV Act, Davies method [Davies v. Powell Duffryn Associated Collieries Ltd., 1942 AC 601 : (1942) 1 All ER 657 (HL)] is applicable.

42. *We therefore hold that the multiplier to be used should be as mentioned in Column (4) of the table above (prepared by applying Susamma Thomas [(1994) 2 SCC 176 : 1994 SCC (Cri) 335], Trilok Chandra [(1996) 4 SCC 362] and Charlie [(2005) 10 SCC 720 : 2005 SCC (Cri) 1657]), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years.”*

21. *It may be noted that the Supreme Court had gone into the history of adoption of multiplier method and referred to Nance v. British Columbia Electric Railway Company Limited, (1951) AC 601 and Davies v. Powell, (1942) AC 601.*

22. *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr., (2009) 6 SCC 121 related to the death of a Scientist who died leaving behind his widow, three minor children, parents and grandfather. Thus, the Supreme Court while laying down that the multiplier has to be adopted as per Column 4 of the table as per the age of the deceased, was generally referring to the award of compensation in cases of death of a person who had a family consisting of widow, children and parents. Of course, general principles with regard to award of compensation in*

case of death of a bachelor were also laid down by the Supreme Court in Sarla Verma (Smt.), but it was not specifically laid down that even in the case of death of a bachelor, the age of the Claimants who may be aged parents will be totally irrelevant.

23. *However, in Amrit Bhanu Shali v. National Insurance Company Limited, (2012) 11 SCC 738, the Supreme Court stated that the selection of the multiplier has to be as per the age of the deceased and not on the basis of the age of the dependants. It was a case which related to the death of a bachelor.*

24. *On account of divergence of opinion in the earlier cases, a reference to a larger Bench was made by a two Judge Bench in Reshma Kumari v. Madan Mohan & Anr., (2009) 13 SCC 422. The question of award of compensation in relation to multiplier and future prospects was gone into at great length by a three Judge Bench of the Supreme Court in Reshma Kumari & Ors. v. Madan Mohan & Anr., (2013) 9 SCC 65. The two referred questions by Reshma Kumari v. Madan Mohan & Anr., (2009) 13 SCC 422 were:-*

“1.1. Whether the multiplier specified in the Second Schedule appended to the Motor Vehicles Act, 1988 (for short “the 1988 Act”) should be scrupulously applied in all cases” and

1.2. Whether for determination of the multiplicand, the 1988 Act provides for any criterion, particularly as regards determination of future prospects?”

25. *While answering the points, in Para 43, the Supreme Court observed as under:-*

“43. In what we have discussed above, we sum up our conclusions as follows:

43.1. In the applications for compensation made under Section 166 of the 1988 Act in death cases where the age of the deceased is 15 years and above.

43.2. In cases where the age of the deceased is up to 15 years.

43.3. As a result of the above, while considering the claim applications made under Section 166 in death cases where the age of the deceased is above 15 years, there is no necessity for the Claims Tribunals to seek guidance or for placing reliance on the Second Schedule in the 1988 Act.

43.4. The Claims Tribunals shall follow the steps and guidelines stated in para 19 of Sarla Verma v. DTC, (2009) 6 SCC 121 for determination of compensation in cases of death.....”

26. In Reshma Kumari & Ors. v. Madan Mohan & Anr., (2013) 9 SCC 65, these were general observations that the steps and guidelines stated in para 19 of Sarla Verma (Smt.) have to be followed. In Sarla Verma (Smt.), it was laid down that having regard to the age of the deceased and period of active career, the active multiplier should be selected and the multiplier should be chosen from the table with reference to the age of the deceased. As I have observed above, it was not the intention in Sarla Verma (Smt.) to apply the multiplier of 18 in case of death of a bachelor aged 25 years where the dependants may only be the aged parents. Thus, in Reshma Kumari also, it was not laid down that the multiplier has to be according to the age of the deceased even when the deceased is a bachelor having dependency of the parents only.

27. Of course, in M. Mansoor & Anr. v. United India Insurance Company Limited & Anr., (2013) 15 SCC 603, the two Judge Bench observed that the multiplier has to be as per the age of the deceased and even in case of death of a bachelor aged 24 years, the multiplier will be 18.

28. However, there is a three Judge Bench decision of the Supreme Court in New India Assurance Company Limited v. Shanti Pathak (Smt.) & Ors., (2007) 10 SCC 1 wherein a bachelor aged 25 years lost his life in a motor vehicular accident which occurred on 11.11.2002. The Claims

Tribunal adopted a multiplier of 17, as per the age of the deceased (25 years). On appeal filed by the New India Assurance Company Limited before the High Court, it was contented that the multiplier has to be as per the age of the Claimants (in that case) and not as per the age of the deceased. The Division Bench of High Court of Uttarakhand declined to accept the contention and dismissed the appeal. In the SLP filed by the Insurance Company, the multiplier of 17 was reduced to '5' on the age of the mother of the deceased being 65 years.

29. *Also, in the latest judgment of the Supreme Court in Ashvinbhai Jayantilal Modi v. Ramkaran Ramchandra Sharma & Anr., (2015)2 SCC 180, a two Judge Bench of the Supreme Court dealt with the questions of multiplier and the appropriate multiplier in case of death of a bachelor in the said case was taken as 13, keeping in mind the age of the parents of the deceased. Para 11 of the report is extracted hereunder:-*

“11. The deceased was a diligent and outstanding student of medicine who could have pursued his MD after his graduation and reached greater heights. Today, medical practice is one of the most sought after and rewarding professions. With the tremendous increase in demand for medical professionals, their salaries are also on the rise. Therefore, we have no doubt in ascertaining the future income of the deceased at Rs 25,000 p.m. i.e. Rs 3,00,000 p.a. Further, deducting 1/3rd of the annual income towards personal expenses as per Oriental Insurance Co. Ltd. v. Deo Patodi [(2009) 13 SCC 123 : (2009) 5 SCC (Civ) 29 : (2010) 1 SCC (Cri) 963] and applying the appropriate multiplier of 13, keeping in mind the age of the parents of the deceased, as per the guidelines laid down in Sarla Verma case [Sarla Verma v. DTC, (2009) 6 SCC 121 : (2009) 2 SCC (Civ) 770 : (2009) 2 SCC (Cri) 1002], we arrive at a total loss of dependency at Rs 26,00,000 [(Rs 3,00,000 minus $\frac{1}{3} \times \text{Rs } 3,00,000) \times 13]$.…….”

30. Thus, right from the two Judge Bench decision in *General Manager, Kerala State Road Transport Corporation, Trivandrum v. Susamma Thomas (Mrs.) and Ors.*, (1994) 2 SCC 176, which for the first time held that the multiplier method is the best way of awarding just compensation, which was approved in *U.P. SRTC v. Trilok Chandara*, (1996) 4 SCC 362, wherein it was held that the multiplier has to be as per the age of the deceased or the Claimant whichever is higher, which is reiterated in *New India Assurance Company Limited v. Shanti Pathak (Smt.) & Ors.*, (2007) 10 SCC 1 by applying the multiplier as per the age of the mother of the deceased (bachelor), the consensus of the larger Bench decisions seems to be that the multiplier has to be selected as per the age of the deceased or the Claimant whichever is higher. The judgment in *Vijay Laxmi & Anr. v. Binod Kumar Yadav & Ors.*, ILR (2012) 6 DEL 447 has thus, correctly interpreted the law. Three Judge Bench decision in *U.P. SRTC v. Trilok Chandara*, (1996) 4 SCC 362 shall be taken as a binding precedent in the matter of selection of multiplier as per the age of the deceased or the Claimants.

31. Moreover, even if there is divergence of opinion in subsequent two Judge Bench decisions or three Judge Bench decisions (although there is no divergence by three Judge Bench decisions), the law laid down by three Judge Bench in *Trilok Chandra* (supra) shall be taken as a binding precedent. In this connection, a reference may be made to *Central Board of Dawoodi Bohra Community and Anr. v. State of Maharashtra & Anr.*, (2005) 2 SCC 673, wherein, 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) 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) 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].”*

32. 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.”

33. Also, in Union of India and 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, it was 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.”

34. Thus, in view of this, the three Judge Bench decision in Trilok Chandra (supra), later reiterated in the three Judge Bench decision of New India Assurance Co. Ltd. v. Shanti Pathak (supra) shall be taken as a binding precedent. The multiplier will be as per the age of the deceased or the Claimant whichever is higher.”

11. Thus, in case of a bachelor, the multiplier will be as per the age of the mother. The mother was aged 52 years in the year 2002. Thus, at the time of the accident *i.e. in 2008* she was aged about 58 years. The appropriate multiplier, therefore, will be 9. The loss of dependency, therefore, will come to ₹ 1,98,882/- (3683/- x 1/2 x 12 x 9).
12. In addition, Respondents no.1 and 2 are entitled to a sum of ₹1,00,000/- towards loss of love and affection, ₹25,000/- towards funeral expenses and ₹10,000/- towards loss to estate.
13. The overall compensation thus, comes to ₹3,33,882/-.
14. It may however, be noted that even in the case of death of a minor child, compensation of ₹3,75,000/- is awarded by this Court. A reference in this regard may be made to *National Insurance Company v. Farzana & Ors., 2009 ACJ 2763*.
15. Accordingly, I award compensation of ₹3,75,000/- in favour of

Respondents no.1 and 2.

16. The excess compensation of ₹2,38,652/- along with proportionate interest shall be refunded to the Appellant Insurance Company.
17. 50% of the awarded compensation has already been released. The balance compensation payable along with interest shall be released to Respondents no.1 and 2 (the Claimants).
18. The appeal is allowed in above terms.
19. Statutory amount, if any, deposited shall also be refunded to the Appellant Insurance Company.
20. Pending applications, if any, also stand disposed of.

(G.P. MITTAL)
JUDGE

APRIL 23, 2015
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