

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

Pronounced on: 26th February, 2015

+ **MAC.APP.574/2014**

ORIENTAL INSURANCE COMPANY LTD..... Appellant

Through: Mr. Abhishek Kumar, Adv.
with Mr. C.K.Gola, Adv.

versus

SUDA & ORS.

..... Respondents

Through: Mr. Pankaj Kumar Deval, Adv.
with Mr. Ashish Kumar, Adv.
& Ms. Anjana Sirohi, Adv. for
R-1 to R-3.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J.

1. The appeal is for reduction of compensation of ₹16,01,680/- awarded by the Motor Accident Claims Tribunal (the Claims Tribunal) in favour of Respondents no.1 to 3 for the death of Balendra, who suffered fatal injuries in a motor vehicular accident which occurred on 21.05.2013.
2. During inquiry before the Claims Tribunal, the Claims Tribunal found that the accident was caused on account of rash and

negligent driving of the motorcycle bearing registration no.UP-50W-7145 by its driver-cum-owner Abhijeet Singh (Respondent no.4 herein). It was claimed that the deceased was running a shop and was earning ₹45,000/- per month. In the absence of any evidence with regard to the deceased's income, the Claims Tribunal took minimum wages of a Matriculate (as per the deceased's qualification), added 30% towards future prospects (age being 42 years), deducted 1/3rd towards personal and living expenses and applied a multiplier of 14 to compute the loss of dependency at ₹13,66,680/-.

3. The Claims Tribunal further awarded a sum of ₹2,35,000/- towards non-pecuniary damages to compute the overall compensation of ₹16,01,680/-.

4. The following contentions are raised on behalf of the Appellant Insurance Company:-

(i) There was contributory negligence on the part of the deceased. Consequently, the compensation awarded ought to have been reduced; and

- (ii) There was no evidence with regard to deceased's good future prospects, thus, addition of 30% towards future prospects was not justified.

NEGLIGENCE

5. In order to prove negligence, Respondents examined one Sudhir, an eye witness to the accident. He testified about the manner of the accident and deposed that the motorcycle bearing registration no.UP-50W-7145 was being driven at a very high speed and it hit the deceased as a result of which, the deceased fell down and suffered injuries which proved fatal. The Claims Tribunal found that nothing elicited in cross-examination of PW-2 to discredit his testimony.
6. Respondents no.1 to 3 had placed on record a photocopy of the site plan prepared by the IO in FIR No.340/2013, registered at Police Station Daurala, Meerut. It shows that the offending motorcyclist had entered the service road from a bye-lane and had struck the motorcycle driven by the deceased. It was the duty of the driver of the motor cycle bearing registration no.UP-

50W-7145 to have slowed down before entering the service road and to have entered the same after ensuring that there was no vehicle or pedestrian coming from the place where he was about to take a turn. The Claims Tribunal therefore, rightly believed the testimony of PW-2, the eye witness. The negligence was therefore, sufficiently established on the test of preponderance of probability. It cannot be said that there was contributory negligence on the part of the deceased. The finding on negligence cannot be faulted.

MULTIPLICAND AND FUTURE PROSPECTS

7. Smt. Suda, widow of deceased Balendra testified that the deceased was doing business and was earning ₹45,000/- per month. No details of the business were given by said Suda. No documentary evidence was also produced with regard to the business being carried on by the deceased. The Claims Tribunal therefore, rightly took the minimum wages of a Matriculate as per his qualification to compute the loss of dependency.
8. As far as future prospects are concerned, proposition of law laid

down in *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121 that there will be addition of 50% and 30% towards future prospects when a victim is in settled employment having bright future prospects like government service in the age group of upto 40 years and above 40 years but less than 50 years respectively was affirmed by a three Judge Bench decision of the Supreme Court in *Reshma Kumari & Ors. v. Madan Mohan & Anr.*, (2013) 9 SCC 65. The question of grant of future prospects was also dealt with by this Court at great length in *HDFC Ergo General Insurance Co. Ltd. v. Smt. Lalta Devi and Ors.*, MAC APP No. 189/ 2014 decided on 12.01.2015 and it was held that the three Judge Bench decision in *Reshma Kumari (supra)* shall be taken as a binding precedent. 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 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. *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 three Judge Bench decision of the Supreme Court in *Sanjay Verma v. Haryana Roadways*, (2014) 3 SCC 210 and the three Judge Bench preferred to follow the judgment in *Reshma Kumar & Ors.* (*supra*). In paras 13 to 15 of the report in *Sanjay Verma v. Haryana Roadways*, (2014) 3 SCC 210, the three Judge Bench of the Supreme Court held as under:-

13. The view taken in Santosh Devi [(2012) 6 SCC has been reiterated by a Bench of three Judges in Rajesh v. Rajbir Singh [(2013) 9 SCC 54 by holding as follows: (Rajesh case (2013) 9 SCC 54 SCC p. 61, paras 8-9)

“8. Since the Court in Santosh Devi case [(2012) 6 SCC 421 : (2012) 3 SCC (Civ) 726 : (2012) 3 SCC (Cri) 160 : (2012) 2 SCC (L&S) 167] actually intended to follow the principle in the case of salaried persons as laid down in Sarla Verma case [Sarla Verma v. DTC, (2009) 6 SCC 121 : (2009) 2 SCC (Civ) 770 : (2009) 2 SCC (Cri) 1002] and to make it applicable also to the self-employed and persons on fixed wages, it is clarified that the increase in the case of those groups is not 30% always; it will also have a reference to the age. In other words, in the case of self-employed or persons with fixed wages, in case, the deceased victim was below 40 years, there must be an addition of 50% to the actual income of the deceased while computing future prospects. Needless to say that the actual income should be income after paying the tax, if any. Addition should

be 30% in case the deceased was in the age group of 40 to 50 years.

9. In Sarla Verma v. DTC, (2009) 6 SCC 121, it has been stated that in the case of those above 50 years, there shall be no addition. Having regard to the fact that in the case of those self-employed or on fixed wages, where there is normally no age of superannuation, we are of the view that it will only be just and equitable to provide an addition of 15% in the case where the victim is between the age group of 50 to 60 years so as to make the compensation just, equitable, fair and reasonable. There shall normally be no addition thereafter.”

14. Certain parallel developments will now have to be taken note of. In Reshma Kumari v. Madan Mohan (2009) 13 SCC 422, 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 (SCC p. 88, para 36) reiterated the view taken in Sarla Verma [Sarala Verma v. DTC, (2009) 6 SCC 121 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 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.”

10. Thus, there cannot be any manner of doubt that in the absence of any evidence with regard to good future prospects, addition of 50% or 30%, as the case may be, is not permissible.
11. Since there was no evidence of future prospects, addition of 30% towards future prospects was not justified.
12. The loss of dependency therefore, comes to ₹10,51,232/- (₹9386/- x 12 x 2/3 x 14).
13. The Respondents (the Claimants) were further awarded a sum

of ₹2,35,000/- towards loss of love and affection, loss of consortium, funeral expenses and loss to estate, which is in consonance with *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54.

14. The overall compensation therefore, comes to ₹12,86,232/-.
15. The excess compensation of ₹3,15,448/- along with proportionate interest and interest earned, if any, during pendency of the appeal shall be refunded to the Appellant Insurance Company.
16. The compensation held payable to Respondents no.1 to 3 (the Claimants) shall be disbursed to them in the proportion and manner as held by the Claims Tribunal.
17. The appeal is allowed in above terms.
18. Statutory amount, if any, deposited shall also be refunded to the Appellant Insurance Company.
19. Pending applications, if any, also stand disposed of.

(G.P. MITTAL)
JUDGE

FEBRUARY 26, 2015/vk