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

*Decided on: 27<sup>th</sup> February, 2015*

+ **MAC.APP. 962/2012**

UP STATE ROAD TRANSPORT CORPORATION.

..... Appellant

Through: Mr.Shadab Khan, Advocate for  
Ms. Garima Prashad, Advocate

versus

SHALINI & ORS

..... Respondents

Through: Mr. S.N. Parashar, Advocate for  
Respondents no.1 to 5.

**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 21.05.2012 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby compensation of Rs.11,03,000/- was

awarded in favour of Respondents no.1 to 5 for the death of Vipin Kumar Sharma who suffered fatal injuries in a motor vehicular accident which occurred on 24.06.2009.

2. On appreciation of evidence, the Claims Tribunal found that the accident was caused because of rash and negligent driving of UP State Road Transport Corporation(UPSRTC) bus bearing no.UP-21-N-6671 which was driven by Hari Prakash, Appellant's driver in a rash and negligent manner. It was claimed that the deceased was working as a Manager with Sunrise Institute of Education and Technology, Kudikhera Dhoom Dadri, Noida(U.P.) and was getting a salary of Rs.25,000/- per month. PW-3 examined by the Respondents, however, denied that the deceased was employed in non-teaching staff with Sunrise Institute of Education and Technology. The Claims Tribunal therefore, assessed the income of the deceased to be Rs.6,000/- per month to award the loss of dependency at Rs.10,53,000/-. The Claims Tribunal further awarded notional sums towards non-pecuniary damages and granted an overall compensation of Rs.11,03,000/-.

3. Following contentions are raised on behalf of the Appellant:
- (i) UPSRTC bus no. UP-21-N-6671 was not involved in the accident; thus, the Appellant had no liability to pay the compensation; and
  - (ii) The compensation awarded is excessive and exorbitant as there was no material to believe the income of the deceased to be Rs.6,000/- per month; the Claims Tribunal ought not to have made addition towards future prospects in the absence of any evidence with regard to the same.
4. On the other hand, Mr. S.N. Parashar, Advocate appearing for Respondents no.1 to 5 states that negligence was duly proved and the compensation awarded is just and reasonable. It is stated that the compensation awarded towards non-pecuniary damages is on the lower side.

**NEGLIGENCE:**

5. Issue of negligence was dealt with by the Claims Tribunal in paras 7 to 10 of the impugned judgment, which are extracted hereunder:

*“7. Testimony of PW-2 Sh. Pravesh Bhardwaj is relevant on this issue. PW-2 Sh. Pravesh Bhardwaj stated that on 24<sup>th</sup> June, 2009 he along with his cousin Sh. Vipin Kumar Sharma was waiting for the bus at roadways bus stand, Transport Nagar, Agra, UP, and the driver of bus bearing no.UP-21-N-6671 drove his vehicle towards rear side at a high speed, rashly and negligently and ran over Sh. Vipin Kumar Sharma. PW-2 stated that Sh. Vipin Kumar Sharma suffered the injuries and succumbed to the injuries suffered in the accident. An FIR No.468/09, under section 279/304-A IPC was registered against the driver of the bus. It is stated that accident was caused due to the sole negligence of the driver of bus bearing no.UP-21-N-6671. During cross-examination PW-2 stated that police reached at the spot at about 10 p.m. and police has not recorded his statement but enquired from him about the accident and he accompanied the police after the accident. PW-2 stated that deceased was his relative and had died and PW-2 was not in his full senses hence could not make complaint on the day of accident.*

*8. On the other hand, respondent no.1 Sh. Hari Prakash examined himself as R-1W-1 and deposed that respondent No.1 had been falsely implicated in the said accident and he had nothing to do with the said accident. It is stated that on 24.06.2009 respondent No.1 was driving the U.P.S.R.T.C. bus bearing no.UP-21-N-6671 from Shorabgate Depot, Meerut, UP, and departed at 12.45 pm. And at about 8.20 p.m., the bus arrived and parked at rest place, bus stand Agra, UP, and when the respondent No.1 got down from his bus he was one person lying injured at some distance from his bus. It is stated that no accident took place because of negligence of respondent No.1 or with the vehicle of respondent No.2. During cross-examination respondent No.1 stated that he was arrested by the police in case FIR*

*No.468/09, P.S. Hariparvat, Agra, UP, and was released on bail and police had seized his vehicle. R-1W-1 also stated that he did not file any complaint to any higher authority of police regarding his arrest.*

*9. I have gone through the record. The respondent No.1 had denied the involvement of the vehicle in the accident but failed to explain why FIR was lodged against him or why his vehicle was seized or why he did not file any complaint to any higher authority if he was falsely implicated. The charge-sheet has already been filed against the respondent No.1.*

*10. On the other hand, the testimony of PW-2 is consistent and reliable and nothing contrary could be elicited in the cross-examination of PW-2. It has come on record that respondent No.1 drove his vehicle to the rear side which resulted into the accident. The respondent No.1 should have taken proper care and caution before moving the bus towards rear side. The FIR, site plan, postmortem report and the testimony of PW-2, taken together, fully establish that Sh. Vipin Kumar Sharma sustained injuries, involving vehicle (Bus) bearing No.UP-21N-6671, in a road accident. There is nothing on record to dispel the inference that Sh. Vipin Kumar Sharma suffered injuries sustained by him in a road accident which occurred on 24.06.2009 because of rash and negligent driving of vehicle bearing registration No. no.UP-21-N-6671, being driven by the respondent No.1. The issue No.1 is decided in favour of the petitioners and against the respondents.”*

6. Thus, it is evident that Pravesh Bhardwaj(PW-2) who was an eye witness to the accident deposed about the manner of the

accident that the deceased was crushed under the wheels of the offending bus while its driver was reversing. The plea put forth by the driver in his examination as R1W1 was that he did not cause the incident and he simply noticed the deceased when he got down from the bus and saw him lying injured at some distance. PW-2 could not have implicated the driver of UPSRTC bus if it was not involved in the accident. The Claims Tribunal rightly appreciated and noticed the evidence of the eye witness and the driver and reached the conclusion that the accident was caused on account of rash and negligent driving of bus no. UP-21-N-6671. I affirm the said finding reached by the Claims Tribunal.

### **MULTIPLICAND**

7. The Respondents' plea that the deceased was working as a Manager with Sunrise Institute of Education and Technology was disbelieved as PW3, their own witness testified that as per the record, the deceased was not on the rolls of non-teaching staff. Thus, in the absence of any specific employment, the Claims Tribunal took the earning of the deceased to be

Rs.6,000/- per month. The minimum wages of the Graduate on the date of the accident was Rs.4,694/- per month. In the absence of any reliable evidence with regard to the deceased's income or the job carried by him, the Claims Tribunal ought to have taken his income as per the minimum wages of a Graduate which was Rs.4,694/- per month at the relevant time.

8. As far as future prospects are concerned, there is no evidence on record that the deceased had bright future prospects. The question of grant of future prospects was dealt with by this Court at great length in *HDFC Ergo General Insurance Co. Ltd. v. Smt. Lalta Devi and Ors. MAC APP No. 189/ 2014 decided on 12.01.2015*. Paras 8 to 21 of the report in *Lalta Devi (supra)* are extracted hereunder:

*“8. It is no gainsaying that in appropriate cases some addition towards future prospects must be made in case of death or injury of a person pursuing a professional course. At the same time, it cannot be laid down as a uniform principle that every person pursuing professional course will have a bright future. There may be a student pursuing engineering from the reputed engineering colleges like Indian Institute of Technology (IIT), Regional Engineering College or any other reputed college.*

*At the same time, a number of engineering Colleges have mushroomed where an engineering graduate may find it difficult to secure a job of an engineer. In the instant case, deceased Aditya, as stated earlier was a student of an unknown engineering college, i.e. Echelon Institute of Technology, Faridabad which is claimed to be affiliated to Maharshi Dayanand University, Rohtak. The Claimants have placed on record result-cum-detailed marks card of First and Second Semester. It may be noted that the deceased had secured just ordinary marks in seven subjects and he had to re-appear in papers 1002 (Mathematical-I), 1006 (Foundation of Computer & Programming) and 1008 (Basics of Mechanical Engineering). Similarly, in the Second Semester the deceased was absent in one of the 12 papers and out of 11 subjects for which he had taken examination, he was to re-appear in four subjects. Thus, it will be difficult to say that the deceased was a brilliant student or that he was pursuing engineering from a well known or even mediocre college.*

*9. The learned counsel for the Claimants has referred to a three Judge Bench decision of the Supreme Court in Rajesh & Ors. v. Rajbir Singh & Ors., (2013) 9 SCC 54 to contend that the future prospects have to be added in all cases where a person is getting fixed wages or is a seasonal employee or is a student.*

*10. It is urged by the learned counsel for the Claimants that the law laid down in Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation &*

*Anr., (2009) 6 SCC 121 was extended in Rajesh & Ors. v. Rajbir Singh & Ors., (2013) 9 SCC 54 to hold that future prospects ought to be extended in all cases.*

*11. On the other hand, the learned counsel for the Insurance Company refers to a three Judge Bench decision of the Supreme Court in Reshma Kumari & Ors. v. Madan Mohan & Anr., (2013) 9 SCC 65 wherein while approving the ratio with regard to future prospects in Sarla Verma (Smt.) & Ors. (supra) and relying on General Manager, Kerala State Road Transport Corporation, Trivandrum v. Susamma Thomas (Mrs.) and Ors. (1994) 2 SCC 176; Sarla Dixit v. Balwant Yadav, (1996) 3 SCC 179 and Abati Bezbaruah v. Dy. Director General, Geological Survey of India & Anr., 2003 (3) SCC 148, the Supreme Court held as under:-*

*“38. With regard to the addition to income for future prospects, in Sarla Verma [Sarla Verma v. DTC, (2009) 6 SCC 121 : (2009) 2 SCC (Civ) 770 : (2009) 2 SCC (Cri) 1002], this Court has noted the earlier decisions in Susamma Thomas [Kerala SRTC v. Susamma Thomas, (1994) 2 SCC 176 : 1994 SCC (Cri) 335], Sarla Dixit [(1996) 3 SCC 179] and Abati Bezbaruah [Abati Bezbaruah v. Geological Survey of India, (2003) 3 SCC 148 : 2003 SCC (Cri) 746] and in para 24 of the Report held as under: (Sarla Verma case [Sarla Verma v. DTC, (2009) 6 SCC 121 : (2009) 2*

SCC (Civ) 770 : (2009) 2 SCC (Cri) 1002] ,  
SCC p. 134):

*“24. ... In view of the imponderables and uncertainties, we are in favour of adopting as a rule of thumb, an addition of 50% of actual salary to the actual salary income of the deceased towards future prospects, where the deceased had a permanent job and was below 40 years. (Where the annual income is in the taxable range, the words ‘actual salary’ should be read as ‘actual salary less tax’). The addition should be only 30% if the age of the deceased was 40 to 50 years. There should be no addition, where the age of the deceased is more than 50 years. Though the evidence may indicate a different percentage of increase, it is necessary to standardise the addition to avoid different yardsticks being applied or different methods of calculation being adopted. Where the deceased was self-employed or was on a fixed salary (without provision for annual increments, etc.), the courts will usually take only the actual income at the time of death. A departure therefrom should be made only in rare and exceptional cases involving special circumstances.”*

*39. The standardization of addition to income for future prospects shall help in achieving certainty in arriving at appropriate compensation. We approve the method that an addition of 50% of actual salary be made to the actual salary income of the deceased towards future prospects where the deceased had a permanent job and was below 40 years and the addition should be only 30% if the age of the deceased was 40 to 50 years and no addition should be made where the age of the deceased is more than 50 years. Where the annual income is in the taxable range, the actual salary shall mean actual salary less tax. In the cases where the deceased was self-employed or was on a fixed salary without provision for annual increments, the actual income at the time of death without any addition to income for future prospects will be appropriate. A departure from the above principle can only be justified in extraordinary circumstances and very exceptional cases.”*

*12. The learned counsel for the Insurance Company relies upon a Constitutional Bench judgment of the Supreme Court in Central Board of Dawoodi Bohra Community & Anr. v. State of Maharashtra & Anr., (2005) 2 SCC 673; Safiya Bee v. Mohd. Vajahath Hussain @ Fasi, (2011) 2 SCC 94; and Union of India & Ors. v. S.K. Kapoor, (2011) 4 SCC 589 to contend that in case of divergence of opinion in judgments of benches*

*of co-equal strength, earlier judgment will be taken as a binding precedent.*

*13. It may be noted that in Reshma Kumari & Ors. v. Madan Mohan & Anr., (2013) 9 SCC 65; the three Judge Bench was dealing with a reference made by a two Judge Bench (S.B. Sinha and Cyriac Joseph, J.J.). The two Hon'ble Judges wanted an authoritative pronouncement from a Larger Bench on the question of applicability of the multiplier and whether the inflation was built in the multiplier. The three Judge Bench approved the two Judge Bench decision of the Supreme Court in Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr., (2009) 6 SCC 121 with regard to the selection of multiplier. It further laid down that addition towards future prospects to the extent of 50% of the actual salary shall be made towards future prospects when the deceased had a permanent job and was below 40 years and addition of 30% should be made if the age of the deceased was between 40-50 years. No addition towards future prospects shall be made where the deceased was self-employed or was getting a fixed salary without any provision of annual increment.*

*14. Of course, three Judge Bench of the Supreme Court in its later judgment in Rajesh relying on Santosh Devi v. National Insurance Company Ltd. & Ors., 2012 (6) SCC 421 observed that there would be addition of 30% and 50%, depending upon the age of the deceased, towards future prospects even in the case of self-employed*

*persons. It may, however, be noted that in Rajesh, the three Judge Bench decision in Reshma Kumari (supra) was not brought to the notice of their Lordships.*

*15. The divergence of opinion was noted by another three Judge Bench of the Supreme Court in Sanjay Verma v. Haryana Roadways, (2014) 3 SCC 210. In paras 14 and 15, the Supreme Court observed as under:-*

*“14. Certain parallel developments will now have to be taken note of. In Reshma Kumari v. Madan Mohan [(2009) 13 SCC 422 : (2009) 5 SCC (Civ) 143 : (2010) 1 SCC (Cri) 1044], a two-Judge Bench of this Court while considering the following questions took the view that the issue(s) needed resolution by a larger Bench: (SCC p. 425, para 10)*

*“(1) Whether the multiplier specified in the Second Schedule appended to the Act should be scrupulously applied in all the cases?*

*(2) Whether for determination of the multiplicand, the Act provides for any criterion, particularly as regards determination of future prospects?”*

*15. Answering the above reference a three-Judge Bench of this Court in Reshma Kumari v. Madan Mohan [(2013) 9 SCC 65 : (2013) 4 SCC (Civ) 191 : (2013) 3 SCC (Cri) 826] (SCC p. 88, para 36) reiterated*

*the view taken in Sarla Verma [Sarla Verma v. DTC, (2009) 6 SCC 121 : (2009) 2 SCC (Civ) 770 : (2009) 2 SCC (Cri) 1002] to the effect that in respect of a person who was on a fixed salary without provision for annual increments or who was self-employed the actual income at the time of death should be taken into account for determining the loss of income unless there are extraordinary and exceptional circumstances. Though the expression “exceptional and extraordinary circumstances” is not capable of any precise definition, in Shakti Devi v. New India Insurance Co. Ltd. [(2010) 14 SCC 575 : (2012) 1 SCC (Civ) 766 : (2011) 3 SCC (Cri) 848] there is a practical application of the aforesaid principle. The near certainty of the regular employment of the deceased in a government department following the retirement of his father was held to be a valid ground to compute the loss of income by taking into account the possible future earnings. The said loss of income, accordingly, was quantified at double the amount that the deceased was earning at the time of his death.”*

*16. Further, the divergence of opinion in Reshma Kumari & Ors. v. Madan Mohan & Anr., (2013) 9 SCC 65 and Rajesh & Ors. v. Rajbir Singh & Ors., (2013) 9 SCC 54 was noticed by the Supreme Court in another latest judgment in National Insurance Company Ltd. v. Pushpa & Ors., CC No.8058/2014, decided on*

*02.07.2014 and in concluding paragraph while making reference to the Larger Bench, the Supreme Court held as under:-*

*“Be it noted, though the decision in Reshma (supra) was rendered at earlier point of time, as is clear, the same has not been noticed in Rajesh (supra) and that is why divergent opinions have been expressed. We are of the considered opinion that as regards the manner of addition of income of future prospects there should be an authoritative pronouncement. Therefore, we think it appropriate to refer the matter to a larger Bench.”*

*17. Now, the question is which of the judgments ought to be followed awaiting answer to the reference made by the Supreme Court in Pushpa & Ors. (supra).*

*18. In Central Board of Dawoodi Bohra Community & Anr. v. State of Maharashtra & Anr., (2005) 2 SCC 673 in para 12, the Supreme Court observed as under:-*

*“12. Having carefully considered the submissions made by the learned Senior Counsel for the parties and having examined the law laid down by the Constitution Benches in the abovesaid decisions, we would like to sum up the legal position in the following terms:*

*(1) The law laid down by this Court in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or coequal strength.*

*(2) [Ed.: Para 12(2) corrected vide Official Corrigendum No. F.3/Ed.B.J./21/2005 dated 3-*

*3-2005.] A Bench of lesser quorum cannot disagree or dissent from the view of the law taken by a Bench of larger quorum. In case of doubt all that the Bench of lesser quorum can do is to invite the attention of the Chief Justice and request for the matter being placed for hearing before a Bench of larger quorum than the Bench whose decision has come up for consideration. It will be open only for a Bench of coequal strength to express an opinion doubting the correctness of the view taken by the earlier Bench of coequal strength, whereupon the matter may be placed for hearing before a Bench consisting of a quorum larger than the one which pronounced the decision laying down the law the correctness of which is doubted.*

*(3) [Ed.: Para 12(3) corrected vide Official Corrigendum No. F.3/Ed.B.J./7/2005 dated 17-1-2005.] The above rules are subject to two exceptions: (i) the abovesaid rules do not bind the discretion of the Chief Justice in whom vests the power of framing the roster and who can direct any particular matter to be placed for hearing before any particular Bench of any strength; and (ii) in spite of the rules laid down hereinabove, if the matter has already come up for hearing before a Bench of larger quorum and that Bench itself feels that the view of the law taken by a Bench of lesser quorum, which view is in doubt, needs correction or reconsideration then by way of exception (and not as a rule) and for reasons given by it, it may*

*proceed to hear the case and examine the correctness of the previous decision in question dispensing with the need of a specific reference or the order of the Chief Justice constituting the Bench and such listing. Such was the situation in 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. 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.6,33,690/-(Rs.4,694/- x 12 x 3/4 x 15).

10. In addition, in view of three Judge Bench decision of the Supreme Court judgment in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54, I further award a sum of Rs.1,00,000/- each towards loss of love and affection and loss of consortium, Rs.25,000/- towards funeral expenses and Rs.10,000/- towards loss to estate.
11. The overall compensation therefore, comes to Rs.8,68,690/-.
12. The excess amount of Rs.2,34,310/- along with interest and the interest accrued during the pendency of the appeal shall be refunded to the Appellant.
13. The compensation payable to Respondents no.1 to 5 (claimants) shall be disbursed/held in Fixed Deposit in terms of the orders passed by the Claims Tribunal.
14. Pending applications, if any, also stand disposed of.
15. Statutory amount, if any, deposited shall be refunded to the

Appellant Insurance Company.

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

**FEBRUARY 27, 2015**  
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