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

Decided on: 22nd January, 2015

+ **MAC.APP. 888/2012**

AMRESH KUMAR & ANR. Appellants

Through: Mr. Sameer Nandwani, Adv.

versus

SAVITA DEVI @ GURIYA & ORS. Respondents

Through: Mr. R.K. Bachchan, Adv. for R-1 to 3.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The Appellant impugns the judgment dated 11.07.2012 whereby a compensation of Rs.10,94,550/- was awarded to Respondents no. 1 to 3 for the death of Ajit Kumar Singh, who died in a motor vehicular accident which occurred on 31.12.2007.

2. It is urged by the learned counsel for the Appellant (owner and driver of the offending vehicle) that the accident was not caused by Maruti Car No. DL 8C 1139. The Appellants were hence, not liable for any compensation.

3. It is urged that the Claims Tribunal erred in believing the testimony of PW-3 Constable Bharat Lal and discarding the testimony of the Appellants both of whom entered in the witness box. In the alternative, it is contended that the compensation awarded is excessive and exorbitant as addition of 30% towards future prospects could not have been made in view of the decision of the Supreme Court in *Reshma Kumari & Ors. V. Madan Mohan & Anr.*, (2013) 9 SCC 65, and as held by this Court in MAC APP No. 189/ 2014 titled *HDFC Ergo General Insurance Co. LTD. v. Smt. Lalta Devi & Ors.* decided on 12.01.2015.

4. On the other hand, the learned counsel for Respondents No.1 to 3 supports the impugned judgment. He urges that the compensation awarded under non-pecuniary heads is on the lower side.

5. The issue of involvement of the vehicle and negligence of its driver was dealt with by the Claims Tribunal in paras 9 to 12, which are extracted hereunder:-

9. The testimony of PW-3 Constable Bharat Lal is relevant on this issue. PW-3 stated that on the day of accident i.e. 31.12.2007, he was on duty at Chimney T-point, Surajmal Vihar, Delhi and at about 23.40 hrs. an accident took place between a scooter bearing no. DL-

7SB-8126 and a Maruti Car no. DL-8C-1139 and in the said accident the driver of the scooter was seriously injured and later on he succumbed to the injuries suffered in the accident. PW-3 stated that accident took place due to rash and negligent driving of the Maruti Car and there was no rashness and negligence on the part of the Scooter Driver. PW-3 stated that he immediately informed to the duty officer and his statement was recorded and an FIR was lodged on his statement u/s 279/337 IPC. PW-3 stated that injured was shifted to hospital by Constable Suresh who was also present at the place of accident. During cross-examination, PW-3 stated that he was at Chimney T-point, Surajmal Vihar from 2.00 p.m. till 11.30 p.m., on 31.12.2007. PW-3 stated that he did not know the name of the company of the vehicle plying on road nor could he tell the shape and size of the vehicle. PW-3 stated that his face was towards Ram Vihar side. PW-3 stated that he saw the offending vehicle for the first time when it was 50 mtrs. from him and the accident took place about 4-5 steps away from him. PW-3 stated that the offending vehicle did not stop after the accident and the speed of the offending vehicle was about 80-90 km/hr. PW-3 also stated that he had mentioned in the FIR that vehicle like Indica car hit the deceased and he had read the number of the vehicle.

10. On the other hand, respondent no. 1 examined himself as RIW1 and deposed that no accident took place with the vehicle of the respondent and the respondent had been falsely implicated in the above noted case by the petitioner, in collusion with the police officials. It is also stated that there was no negligence on the part of the respondent and that since purchase of the alleged vehicle the same was never brought to Delhi and same was lying in the native village of the respondent. It is also stated that accident took place with some other vehicle and constable Bharat Lal did not witness the accident. During cross-examination, RIW1 stated that he was

facing trial in criminal case. R1W1 further stated that he had no enmity with the police official or with the petitioner who were not known to him.

11. Respondent no. 2, Sh. Vijay Pal Singh, R2W2 stated that he was registered owner of Maruti Car No. DL-8C-1139. The respondent no. 2 stated almost same facts as stated by respondent no. 1.

12. I have gone through the material on record. The case of the respondent no. 1 and 2 is that no accident has taken place with the vehicle no. DL-8C-1139. The testimonies of R1W1 and R2W1 are not reliable. They are the interested witnesses. Even otherwise, it is wholly unimaginable that the vehicle was never brought to Delhi after the purchase of the vehicle by them. The vehicle bears the registration number of Delhi. Respondent no. 2 is also resident of Delhi. Further the FIR was lodged within three hours of the accident and number of the said vehicle is clearly mentioned in the FIR. The FIR has been lodged by the constable who was present at the place of accident. The testimony of PW-3 Sh. Bharat Lal is reliable and consistent and nothing contrary could be elicited during lengthy cross-examination of PW-3. Merely because constable Bharat Lal has stated in FIR that car was like Indica, does not, in any manner, discredit the testimony of PW-3 which is otherwise reliable and consistent.”

6. Learned counsel for the Appellant has strenuously contended that the Claims Tribunal ought to have relied upon the testimony of R2W1 (Driver) and R2W2 (Owner) who deposed about the offending vehicle at the native place on the date of the incident.

7. I have perused the trial court record including the testimonies of PW-3, R2W1 and R2W2 and the FIR.

8. It may be noted that complete number of the offending vehicle was given in the FIR.

9. The contention of the learned counsel for the Appellant that the description of the car as mentioned in the FIR was of Indica is not of much consequence in view of the fact that complete number of the vehicle was given. Moreover, it was stated that it looked like Indica car. It may be noted that PW-3 Constable Bharat Lal was very categorical that the speed of offending vehicle was 80 to 90 km per hour. PW-3 was able to note the number of offending vehicle which was mentioned in the FIR that was recorded within three hours of the accident. Of course, PW-3 had not been able to give the description but that is not of much importance as the power of observation, retention and re-production of all the persons is not alike. It appears that the witness concentrated on the number of the offending vehicle.

10. There was no enmity or motive of PW-3 Constable Bharat Lal to falsely implicate vehicle no. DL 8C 1139 in the accident. Thus, the finding on involvement of the vehicle and negligence reached by the

Tribunal cannot be faulted.

11. As far as the grant of future prospects is concerned, the question was gone into at great length by this Court in MAC APP 189/ 2014 titled *HDFC Ergo General Insurance Co. LTD. vs. Smt. Lalta Devi & Ors.* decided on 12th January, 2015. Paras 8 to 21 of the report in *Lalta Devi & Ors. (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.”

12. In view of this, addition of future prospects was not justified. At the same time, the compensation of Rs. 25,000/- towards loss of love and affection, Rs.10,000/- each towards loss of estate, and loss of consortium and Rs. 5,000/- towards funeral expenses is on the lower side.

13. Hence, the loss of dependency is recomputed as Rs.5,76,000/- [4000 X 12 X 2/3 X 18].

14. The compensation of Rs.5,000/- awarded towards funeral

expenses is raised to Rs.25,000/- and a further notional sum of Rs. 10,000/- is awarded towards loss of estate. Rs.1,00,000 each is also awarded towards loss of love and affection and towards loss of consortium.

15. The overall compensation hence comes to Rs.11,06,747/- (Rs.5,76,000/- + 2,35,000/- + 2,95,747/- medical bills), which is in the vicinity of the compensation awarded by the Claims Tribunal.

16. In view of the above, the over-all compensation awarded by the claimants by the Tribunal is just and reasonable.

17. 75% of the award amount has already been deposited. The balance compensation shall be deposited within six weeks.

18. The appeal is dismissed in above terms.

(G.P. MITTAL)
JUDGE

JANUARY 22, 2015
‘sn’