

\$~13 & 14

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

Date of decision: 9th March, 2015

+ **MAC.APP. 465/2013**

SHRIRAM GENERAL INSURANCE CO. LTD.

..... Appellant

Through: Mr. Manish Kaushik, Adv. for
Mr. K.L.Nandwani, Adv.

versus

JAMATI DEVI & ORS.

..... Respondents

Through: Ms. Sonam Anand, Adv. with
Mr. Nimit Mathur, Adv.

+ **MAC.APP. 877/2013**

JAMATI DEVI & ORS.

..... Appellants

Through: Ms. Sonam Anand, Adv. with
Mr. Nimit Mathur, Adv.

versus

SHRIRAM GENERAL INSURANCE CO. LTD.

..... Respondent

Through: Mr. Manish Kaushik, Adv. for
Mr. K.L.Nandwani, Adv.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

G. P. MITTAL, J. (ORAL)

CM APPL.15281/2013 (delay) in MAC APP.877/2013

For the reasons stated in the application, delay of 438 days in filing the appeal is condoned.

Application stands disposed of.

MAC.APP. 465/2013

MAC.APP. 877/2013

1. These two appeals arise out of a judgment dated 17.07.2012 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby a compensation of ₹11,06,775/- was awarded in favour of the legal representatives of deceased Balbir Singh, who suffered fatal injuries in a motor vehicular accident which occurred on 03.05.2011.
2. MAC APP.465/2013 is for reduction of the compensation whereas MAC APP.877/2013 is for enhancement of the compensation.
3. The finding on negligence is not challenged by the Appellant Insurance Company.
4. For the sake of convenience, the Appellant in MAC APP.465/2013 shall be referred to as the Insurance Company whereas the Appellants

in MAC APP.877/2013 and the mother of deceased Balbir Singh shall be referred to as the Claimants.

5. The only contention raised by the Appellant Insurance Company is that there was no evidence whatsoever with regard to better future prospects, the Claims Tribunal erred in making addition of 30% towards future prospects.
6. On the other hand, the learned counsel for the Claimants referring to the judgment of *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and a judgment of the learned Single Judge of this Court in *Sativa & Ors. v. Sri Ram General Insurance Co. Ltd. & Ors.*, MAC APP.57/2013, decided on 30.01.2014, urges that there ought to have been addition of 50% towards future prospects and that a compensation of ₹1,00,000/- each ought to have been awarded towards loss of love and affection and loss of consortium and ₹25,000/- ought to have been awarded towards funeral expenses.
7. It is urged that the compensation awarded should be re-distributed as just 15% of the compensation was awarded in favour of the widow of the deceased, Smt. Jamati Devi and that the rest of the amount awarded to the minor children and the mother was kept in fixed

deposit. Thus, Claimant no.1 is unable to take care of the minor children.

INCOME AND FUTURE PROSPECTS

8. During inquiry before the Claims Tribunal, the Claimants examined Shri Gajender Singh PW-3, an employee of Earth Wise. Salary certificate of the deceased was also proved on record which revealed that the deceased was getting a salary of ₹6050/- per month, in addition to the sum of ₹2,000/- per month towards reimbursement towards conveyance. The deceased was further getting a sum of ₹3500/- per annum towards bonus and ₹5236/- towards leave encashment.
9. It is established on record that the deceased was studying in 10th standard, when he sought Transfer Certificate. Minimum Wages of a non-Matriculate on the date of accident were ₹7098/-. I will assume that a sum of ₹1,000/- out of conveyance reimbursement might have been spent by the deceased towards commuting to the place of his employment. Thus, the salary of the deceased would come to about ₹7050/- p.m. which was almost equal to the minimum wages of a non-Matriculate.

10. The deceased was getting a bonus of ₹3500/- per annum. He was also getting encashment of leave of ₹5236/- in the previous year. In my view, these sums are for the benefit of the family and therefore, have to be included in the income of the deceased to compute the loss of dependency.
11. As far as addition towards future prospects is concerned, the question was dealt with at great detail 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 [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 the instant case, although at one place it is stated that the deceased was working with the company since the year 2000 but his salary was found to be just equal to the minimum wages of a non-Matriculate therefore, it cannot be said that the deceased had bright future prospects to enable him to addition for the same.
13. The loss of dependency therefore, will come to ₹10,56,510/- (7098/- x 12 + 3500/- + 5236/- x 3/4 x 15).
14. Initially, the trend was to award only a notional sum towards non-pecuniary damages. However, in view of the three Judge Bench decision in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54, the courts are awarding compensation of ₹1,00,000/- each towards loss of love and affection and loss of consortium, ₹25,000/- towards funeral expenses and ₹10,000/- towards loss to estate. Following *Rajesh & Ors. (supra)*, I tend to award these non-pecuniary damages to the Claimants.

15. The compensation thus is enhanced from ₹11,06,775/- to ₹12,91,510/- which shall carry interest @ 8% per annum from the date of filing of the Claim Petition.
16. The enhanced compensation of ₹1,84,735/- shall be deposited by the Appellant Insurance Company along with the interest within six weeks.
17. I tend to agree with the learned counsel for the Claimants that the percentage of compensation awarded to the widow of the deceased is on the lower side.
18. The compensation to Claimants no.2 to 5 is reduced from 20% each to 15% each. While the award of 5% in respect of mother of the deceased is maintained. Rest 35% of the compensation shall be the share of the first Claimant Smt. Jamati Devi (widow of the deceased). In addition, the entire enhanced compensation shall also enure for the benefit of Claimant no.1.
19. 80% of the enhanced compensation shall be held in fixed deposit for a period of two years and four years proportionately. Rest shall be released on deposit.
20. Both the appeals are allowed in above terms.

21. Statutory amount shall be released to Respondent no.1 (the Claimant no.1.) as the cost of ₹25,000/- imposed on 21.04.2014 was not paid.
22. Pending applications, if any, also stand disposed of.

(G.P. MITTAL)
JUDGE

MARCH 09, 2015
vk