

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

Pronounced on: 21st January, 2015

+ MAC.APP. 988/2012

NATIONAL INSURANCE CO. LTD. Appellant

Through : Mr. Shoumik Mazumdar and
Mr.Pankaj Seth, Advs.

versus

GEETA DEVI AND ORS. Respondents

Through : None.

CORAM:

HON'BLE MR. JUSTICE G.P. MITTAL

G.P. MITTAL, J. (ORAL)

1. The appellant National Insurance Company Limited impugns the judgment dated 02.06.2012 passed by the Claims Tribunal whereby a compensation of Rs.18,02,342/- was awarded in favour of Respondents No.1 to 6 for the death of Lala Ram who died in a motor vehicle accident which occurred on 07.09.2011 at 5.03 pm.

2. At the time of hearing the appeal, the following contentions are raised by the learned counsel for the appellant:-

(i) the proof of income of Rs.10,000/- per month was disbelieved by the Claims Tribunal yet the Claims Tribunal took the income of the deceased as Rs.8500/- per month without any material in this regard;

(ii) Since it was not proved that the deceased had a permanent job, addition of 30% towards future prospects was not justified;

(iii) the compensation awarded towards non-pecuniary damages is on the higher side;

(iv) the Claims Tribunal awarded a sum of Rs.70,000/- towards Lawyers' Fee without any basis.

3. Along with the Detailed Accident Report (DAR), a salary certificate purported to be issued by Millennium Builders was filed. During enquiry before the Claims Tribunal, it was found that the certificate was not issued by Millennium Builders. The partners of M/s. Millennium Builders appeared before the Claims Tribunal on 13.01.2012 and completely denied having issued the certificate. The Claims Tribunal assessed the income of the deceased to be Rs.8500/- per month without any reasonable basis. In fact in the Affidavit, Ex.PW-1/A, Respondent no.1 had claimed the employment of the deceased with Millennium Builders with a salary of Rs.10,000/-. A perusal of the order dated 13.01.2012 indicates that Respondent no.1 claimed that the service certificate was handed over by her brother. At that time, Respondent no.1 informed the Claims Tribunal that her deceased husband used to supply "*Kurkure*". The Affidavit on question of income was also contradictory. In view of this, the Claims Tribunal ought to have taken minimum wages of an unskilled worker to award loss of dependency which were Rs.6422/- per month at the time of the accident. As far as future prospects are concerned, there was no evidence that deceased was having good future prospects. The question of grant of future prospects was dealt with at great length by this Court in Mac. App. No.189/2014 titled *HDFC Ergo General Insurance Co. Ltd. v. Smt. Lalta Devi & Ors.* decided on 12th January, 2015. Para Nos.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 Raghbir 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.”

4. Since the deceased was not a permanent employee and there was no evidence of better future prospects, the Claims Tribunal was not justified in making addition towards future prospects.

5. The deceased was survived by his widow and five children. The Claims Tribunal, therefore, deducted one-third towards personal expenses which is in consonance with *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121.

6. The deceased was aged 41 years. The selection of multiplier of 14 was also in consonance with *Sarla Verma & Others. (supra)*

7. The loss of dependency thus, comes to Rs.8,09,172/-(Rs.6422/- X $\frac{3}{4}$ X 12 X 14).

8. This Court in *ICICI Lombard General Insurance Co. Ltd. vs. Kanti Devi & Ors.*, MAC. Appeal No.645/2012 decided on 30.07.2012 had gone into the question of grant of counsel's fee and had concluded that counsel's fee cannot be directly paid to the counsel. Para 32 of the report is extracted hereunder:-

“32. To sum up, it is directed :-

- (i) The Claims Tribunal is empowered to award costs in a Claim Petition in terms of Section 35 read with Order XXA of the Code.*
- (ii) The Claims Tribunal is entitled to award the Counsel's fee in accordance with Rule 1 read with Rule 1A and Rule 9 of Chapter 16 Volume I of the Rules extracted earlier.*
- (iii) In case of compromise/settlement of the claims, the Claims Tribunal is not entitled to go beyond the settlement reached between the parties. If the settlement does not provide for payment of any Counsel's fee, it shall not be within the domain of the Claims Tribunal to award the Counsel's fee.*
- (iv) If the compensation is awarded on the basis of DAR in pursuance of the legal offer made by the Insurer, the Claims Tribunal is not empowered to award any costs unless it forms part of the legal offer.*
- (v) The counsel fee can be directly paid to the counsel only when a specific agreement is filed and the Claimant*

requires payment of fee directly to the counsel because only then the Claimant would be liable to reimburse the fee or part thereof in case the award is set aside or varied.’’

9. Thus, instead of award of counsel's fee, the claim petition ought to have been allowed with costs and the counsel's fee to be paid in accordance with Rule-1 read with Rule-1A and Rule 9 of Chapter 16 Volume I of the Delhi High Court Rules and Orders.

10. As far as non-pecuniary damages are concerned, Respondent no.1 would be entitled to Rs.1 lakh towards consortium as against Rs.50,000/- granted by the Claims Tribunal. Respondents no.1 to 6 will be entitled to Rs.1 lakh towards loss of love and affection, Rs.25,000/- towards funeral expenses and Rs.10,000/- towards loss to estate (*Rajesh & Ors. v. Rajbir Singh & Ors., (2013) 9 SCC 54*). No compensation is permissible towards loss of care and attention.

11. The compensation awarded is re-computed as:-

Sl.No.	Compensation under various heads	Awarded by this Court (in Rs.)
1.	Loss of Dependency	8,09,172/-
2.	Funeral Charges	25,000/-
3.	Loss to estate	10,000/-
4.	Loss of consortium	1,00,000/-
5.	Loss of love and affection etc.	1,00,000/-
6.	Loss of care & attention etc.	-

	Total	10,44,172/-
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11. The compensation is hence, reduced from Rs.18,02,342/- to Rs.10,44,172/-.

12. Thus, the excess sum of Rs.7,58,170/- along with proportionate interest as granted by the Claims Tribunal and the interest accrued, if any, during the pendency of the Appeal shall be refunded to the Appellant ICICI Lombard General Insurance Co. Ltd. Cost in terms of para 9 shall be paid by the appellant Insurance Company.

13. The compensation awarded in favour of the Claimants shall be released/held in fixed deposit in favour of the Claimants as awarded by the Claims Tribunal.

14. Appeal is allowed in above terms.

15. Pending applications, if any, also stand disposed of.

16. Statutory amount, if any, deposited shall be refunded to the Appellant Insurance Company.

(G.P. MITTAL)
JUDGE

JANUARY 21, 2015
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