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

Decided on: 19th January, 2015

+ **MAC.APP. 157/2012**

ORIENTAL INSURANCE COMPANY

..... Appellant

Through: Mr.Tarkeshwar Nath, Advocate

versus

BABITA DEVI & ORS.

..... Respondents

Through: Mr. R.S. Roy, Advocate for
Respondents no.1 to 5.

+ **MAC.APP. 1017/2012**

BABITA DEVI & ORS.

..... Appellants

Through: Mr. R.S. Roy, Advocate

versus

ORIENTAL INSURANCE COMPANY

..... Respondent

Through: Mr.Tarkeshwar Nath, Advocate

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. These are two appeals arising out of judgment dated 23.11.2011 passed by the Motor Accident Claims Tribunal (the Claims

Tribunal) whereby compensation of Rs.8,99,000/- was awarded in favour of Respondents no.1 to 5 in MAC. APP. 157/2012 and Appellants in MAC.APP.1017/2012.

2. For the sake of convenience, the Appellant in MAC.157/2012 shall be referred to as Insurance Company, whereas Respondents no.1 to 5 in MAC.APP. 1017/2012 shall be referred to as the claimants.
3. Following contentions are raised on behalf of the Appellant Insurance Company:
 - (i) Primarily, the deceased Mithlesh Yadav himself was to be blamed for the unfortunate incident. In any case, there was contributory negligence on the part of deceased Mithlesh Yadav as can be seen from the site plan which has been placed on record by the claimant.
 - (ii) The income of the deceased was assessed to be Rs.6,000/- per month. In the absence of any evidence, the Claims Tribunal ought to have taken the income as per the Minimum Wages Act.
4. *Per contra*, the learned counsel for the claimants urges that from filing of the report under Section 173 of the Code of Criminal Procedure, 1973, which was duly placed on record, negligence on the part of the driver of the truck bearing UP-07-H-0245 was sufficiently established. No addition towards

future prospects was made. The compensation awarded towards non-pecuniary heads is on the lower side.

NEGLIGENCE:

5. With regard to negligence, the Claims Tribunal held as under:

“15. The petitioner has filed on record certified copy of chargesheet, FIR and site plan. Police investigation has concluded that the accident in this case has taken place due to rash and negligent driving of driver of vehicle bearing registration no.HR-07-H-0245 by respondent no.1 who is accused in the criminal case filed by the police.

The postmortem report, on the other hand also reflects that the injuries are of the nature which could have been caused due to injuries sustained in road traffic accident.

PW-5 Mohd. Tatar, who is an eyewitness of the case has also stated that the accident had taken place due to rash and negligent driving of the driver of the offending vehicle bearing no.UP-07-H-0245.

It is, therefore, prima facie clear that the accident in this case had taken place with the offending vehicle which was being driven by respondent no.1 in rash and negligent manner at very high speed causing death of the deceased.”

6. I have the Trial Court record before me. Vehicle no. HR-26-GA-1301 being driven by deceased Mithilesh Yadav was proceeding from Roorkee to Haridwar, whereas vehicle no.UP-07-H-0245 being driven by the Respondent driver was coming from Haridwar and was proceeding to Roorkee. The accident

took place at point 'A', which is slightly towards right side from middle of the road. In another words, the accident had taken place whereby the truck driven by the deceased had slightly travelled in the area where the offending vehicle was coming. Admittedly, it was a head-on-collision and since the vehicle driven by deceased Mithilesh Yadav had slightly gone on the wrong side, I am inclined to hold it as a case of contributory negligence.

7. Of course, PW-5 Mohd. Tatar who claims to be an eye witness to the accident stated that the accident occurred partly due to the fault of the driver of the truck bearing no. UP-07-H-0245 as it was driven at high speed. In my view, it was merely *ipse dixit* of the witness. From the circumstances and the manner of accident, it is evident that it was a case of contributory negligence.

QUANTUM:

8. Coming to the compensation awarded, the Claims Tribunal took the salary of deceased Mithilesh Yadav to be Rs.6,000/- p.m. The accident took place in the year 2006. The minimum wages of a skilled worker at that time were Rs.3,695/-. The claimant examined PW-4 Balvinder Singh, Booking Officer of M/s. Bittoo Road Lines who deposed about the salary of the deceased as Rs. 3,000/- p.m. and allowance @ Rs.100/- per day. In my view, the Claims Tribunal rightly took the deceased

salary to be Rs.6,000/- per month.

9. As far as addition towards future prospects is concerned, this Court in *HDFC ERGO General Insurance Co. Ltd. v. Smt. Lalta Devi & Ors.*, (MAC. APP. 189/2014) decided on 12.01.2015 dealt with the aspect in great details. Paras 9 to 21 of the report in *Lalta Devi* are extracted hereunder:-

“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. (surpa) shall be taken as a binding precedent.”*

10. There was no evidence that the deceased was a permanent employee and or that the deceased had good future prospects.

In view of this, the Claims Tribunal had rightly assessed the loss of dependency without any addition on future prospects.

11. Turning to the compensation towards non-pecuniary damages, the compensation awarded towards loss of love and affection and loss of consortium is raised from Rs.10,000/- each to Rs.1,00,000/- each and compensation awarded towards funeral expenses is raised from Rs.5,000/- to Rs.25,000/-. (*Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54).
12. The overall compensation thus, comes to Rs.11,89,000/-.
13. The compensation is accordingly enhanced by Rs.2,90,000/- which shall carry interest @ 7.5% per annum from the date of the filing of the petition/DAR till the date of deposit.
14. While dealing with the issue of negligence, I have already held that there was 50% contributory negligence on the part of the deceased. The Appellant Insurance Company will be liable to pay 50% of the overall compensation of Rs.11,89,000/-, which comes to Rs.5,94,500/-.
15. By an order dated 13.02.2012, the entire award amount of Rs.8,99,000/- awarded by the Claims Tribunal was ordered to be deposited in this Court.
16. The excess amount of Rs.3,04,500/- along with proportionate interest shall be refunded to the Appellant Insurance Company. Rest of the amount shall be released in terms of the orders

passed by the Claims Tribunal.

17. The Claims Tribunal shall be entitled to deal with the application for release of the amount.
18. The appeals are disposed of accordingly.
19. Pending applications stand disposed of.
20. Statutory amount of Rs.25,000/-, if any, shall also be refunded to the Appellant Insurance Company.

(G.P. MITTAL)
JUDGE

JANUARY 19, 2015
pst