

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

Date of decision: 19 January, 2015

+ **MAC.APP.1184/2013**

SHRIRAM GENERAL INSURANCE COMPANY LTD.

..... Appellant

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

versus

MADAN LAL & ORS.

..... Respondents

Through: Mr. Nagender Deswal, Adv. for R-1 &
R-2.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

G. P. MITTAL, J. (ORAL)

1. The Appellant Shriram General Insurance Company Limited impugned the judgment dated 12.07.2013 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby a compensation of Rs.8,38,752/- was awarded in favour of Respondents no.1 and 2.
2. There is twin challenge to the impugned judgment. First, there was no negligence on the part of Respondent no.3, driver of the vehicle involved in the accident and second, deceased Tarun Kumar was not in permanent employment. The Claims Tribunal erred in making an addition of 50% towards future prospects.

3. Learned counsel for Respondents no.1 and 2 supports the impugned judgment.

NEGLIGENCE

4. The Claims Tribunal dealt with the issue of negligence in paras 10 and 11 of the impugned judgment which are extracted hereunder:-

“10. I have gone through the material on record. It is recorded in the FIR that there was some oil spilt on the road and due to which the motorcycle on which the deceased was riding, slipped and a bus no. DL-1PC-6991 driven rashly and negligently, hit Sh. Tarun Kumar.

11. It is clear from the FIR as well as testimony of PW 2 that bus was being driven at a high speed otherwise the driver of the bus could have controlled and stopped the bus before hitting the deceased. The FIR, Charge sheet, postmortem report and the testimony of the PW-1, taken together fully establish the death of the deceased caused by the injuries sustained by him involving vehicle bearing registration No. DL-1PC-6991 in a road accident. There is nothing on record to dispel the inference that deceased Sh. Tarun Kumar, died on account of injuries sustained by him in a road accident which occurred on 18.11.2011 because of rash and negligent driving of vehicle bearing No. DL-1PC-6991 being driven by respondent no. 1. Issue no. 1 is accordingly decided in favour of petitioners and against the respondents.”

5. Thus, the Claims Tribunal held that the offending vehicle, i.e. bus bearing registration no.DL-1PC-6991 was being driven at high speed, otherwise the driver of the bus could have controlled and stopped the bus.

6. The findings of the Claims Tribunal cannot be faulted. The driver of the bus ought to have maintained reasonable distance so as to stop the vehicle in case of any need. That having not been done and the deceased being crushed by the offending bus, negligence on the part of the driver was sufficiently established.

QUANTUM OF COMPENSATION

7. In the Claim Petition, during the inquiry before the Claims Tribunal, it was claimed that the deceased Tarun Kumar was aged 19 years at the time of the accident. He was working as a Supervisor and was getting a salary of Rs.10,000/- per month. During inquiry, Respondents no.1 to 6 examined PW-3 Mitesh Jain, Proprietor of Abhishek Financial Services where deceased Tarun Kumar was claimed to be working. His evidence was found to be not credible. In the absence of any record being produced by PW-3, the Claims Tribunal took the minimum wages of an unskilled worker to compute the loss of dependency. The finding on this aspect is well reasoned. The same cannot be faulted.
8. As far as addition of future prospects is concerned, the question was gone into by me in *HDFC Ergo General Insurance Co Ltd. v. Smt Lalta Devi & Ors*, MAC.APP. 189/2014, decided on 12.01.2015. I had

gone into the question whether increase of 30% or 50%, as the case may be, has to be given in the income of persons earning fixed salary as future prospects. I have held that the judgment in *Reshma Kumari & Ors. v. Madan Mohan & Anr.* (2013) 9 SCC 65 shall be taken as a binding precedent. 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. (supra) shall be taken as a binding precedent.”

9. In the instant case, no credible evidence with regard to the fact that the deceased was a permanent employee or held a stable job was produced. No evidence with regard to future prospects was produced. In view of this, addition towards future prospects was not justified. The loss of dependency will therefore, come to Rs.5,19,168/- (6656/- x 12 x 1/2 x 13).
10. Hence, the Claims Tribunal awarded a compensation of Rs.25,000/- towards loss of love and affection. In view of the judgment in *Rajesh & Ors. v. Rajbir Singh & Ors., (2013) 9 SCC 54*, the compensation awarded towards loss of love and affection is increased to Rs.1,00,000/-.
11. The revised compensation is tabulated as under:-

Sl. No.	Compensation under various heads	Awarded by the Claims Tribunal	Awarded by this Court
1.	Loss of Dependency	7,78,752/-	5,19,168/-

2.	Loss of Love and Affection	25,000/-	1,00,000/-
3.	Funeral Expenses	25,000/-	25,000/-
4.	Loss of Estate	10,000/-	10,000/-
	Total	Rs.8,38,752/-	Rs.6,54,168/-

12. The overall compensation is, therefore, reduced from Rs.8,38,752/- to Rs.6,54,168/-.
13. The excess compensation of Rs.1,84,584/- along with proportionate interest shall be refunded to the Appellant Insurance Company.
14. The compensation awarded shall be released/held in fixed deposit in favour of Respondents no.1 and 6 in the proportion as directed by the Claims Tribunal.
15. The statutory amount of ₹25,000/- shall also be refunded to the Appellant Insurance Company.
16. The appeal is allowed in above terms.
17. Pending applications also stand disposed of.

(G.P. MITTAL)
JUDGE

JANUARY 19, 2015

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