(2015) 03 DEL CK 0268

In the Delhi High Court

Case No : Mac. App. 312/2012

ICICI Lombard General Insurance Co. Ltd. APPELLANT

Vs

Kasib and Others RESPONDENT

Date of Decision : 17-03-2015

Acts Referred:

Citation : (2015) 03 DEL CK 0268

Hon'ble Judges : G.P. Mittal, J.

Bench : Single Bench

Advocate : Suman Bagga and Pankaj Gupta, for the Appellant

Final Decision : Allowed

Judgement

G.P. Mittal, J.—The appeal is for reduction of compensation of Rs. 18,81,120/- granted by judgment dated 03.12.2011 by the Motor Accident Claims Tribunal (the Claims Tribunal) in favour of Respondent No. 1 for having suffered serious injuries in a motor vehicular accident which occurred on 20.04.2010.

2. During inquiry before the Claims Tribunal, it was claimed that the accident was caused because of rash and negligent driving of Tata 407 bearing registration no. DL-1L-G-0681 by its driver. Respondent no. 1 claimed himself to be working as a helper on truck no. HR-55-E-6104. Respondent no. 1 claimed his salary to be Rs. 10,000/- per month. On appreciation of evidence, the Claims Tribunal found that Respondent no. 1 suffered 100% functional disability on account of amputation of his left leg above knee. In the absence of any evidence with regard to Respondent no. 1''s income, the Claims Tribunal took minimum wages of an unskilled worker, added 50% towards inflation and awarded Rs. 17,10,072/- towards the loss of disability in addition to certain sums on pecuniary and non-pecuniary damages.

3. The compensation awarded under each head by the Claims Tribunal is extracted hereunder:

4. The only ground of challenge raised by the learned counsel for the Appellant is that Respondent no. 1 was only working as a helper on the truck and there was no evidence whatsoever with regard to his better future prospects. The Claims Tribunal acted illegally in making addition of 50% towards future prospects. Reliance is placed on three Judge Bench decision of the Supreme Court in Reshma Kumari and Others Vs. Madan Mohan and Another, and a judgment of 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.

5. The question of grant of future prospects was dealt with by this Court at great length in HDFC Ergo General Insurance Co. Ltd. v. Smt. Lalta Devi and Ors. MAC APP No. 189/ 2014 decided on 12.01.2015. 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 and 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 and Others Vs. Rajbir Singh and Others, 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 Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, was extended in Rajesh and Others Vs. Rajbir Singh and Others, 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 and

Others Vs. Madan Mohan and Another, wherein while approving the ratio with regard to future prospects in Sarla Verma (Smt.) and Ors. (supra) and relying on General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, ; Smt. Sarla Dixit and another Vs. Balwant Yadav and others, and Abati Bezbaruah Vs. Dy. Director General Geological Survey of India and Another, , the Supreme Court held as under:-

"38. With regard to the addition to income for future prospects, in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , this Court has noted the earlier decisions in General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, , Smt. Sarla Dixit and another Vs. Balwant Yadav and others, and Abati Bezbaruah Vs. Dy. Director General Geological Survey of India and Another, and in para 24 of the Report held as under: Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, :

"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 and Another Vs. State of Maharashtra and Another, ; Safiya Bee Vs. Mohd. Vajahath Hussain alias Fasi, ; and Union of India (UOI) and Others Vs. S.K. Kapoor, 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 and Others Vs. Madan Mohan and Another, ; 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 Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, 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 Vs. National Insurance Company Ltd. and Others, 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 Vs. Haryana Roadways, . 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 and Others Vs. Madan Mohan and Another, , 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 and Others Vs. Madan Mohan and Another, reiterated the view taken in Sarla Verma Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, 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 Vs. New India Insurance Co. Ltd. and Another, 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 and Others Vs. Madan Mohan and Another, and Rajesh and Others Vs. Rajbir Singh and Others, was noticed by the Supreme Court in another latest judgment in National Insurance Company Ltd. v. Pushpa and 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 and Ors. (supra) .

18. In Central Board of Dawoodi Bohra Community and Another Vs. State of Maharashtra and Another, , 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 Union of India (UOI) and Another Vs. Raghubir Singh (Dead) by Lrs. Etc., and Hansoli Devi [(2002) 7 SCC 273]."

19. Similarly, in Safiya Bee Vs. Mohd. Vajahath Hussain alias Fasi, , 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 (UOI) and Others Vs. S.K. Kapoor, 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 Vs. Union of India (UOI) and Others, was prior to the decision in Union of India (UOI) and Another Vs. T.V. Patel, . 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 Vs. Union of India (UOI) and Others, was not noticed in Union of India (UOI) and Another Vs. T.V.

Patel, , the latter decision is a judgment per incuriam. The decision in S.N. Narula Vs. Union of India (UOI) and Others, 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 and 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 and Ors. (supra) shall be taken as a binding precedent."

6. Thus, in the absence of any evidence of good future prospects, no addition towards future prospects ought to have been made by the Claims Tribunal. In the instant case as stated earlier, Respondent no. 1 was merely working as a helper and there was no evidence, whatsoever, with regard to his better future prospects thus, addition of 50% towards future prospects is not justified. The loss of disability therefore, comes to Rs. 11,40,048/-(Rs.5278/- x 12 x 18) .

7. Although, none has appeared on behalf of the Respondent no. 1 to support the impugned judgment. Since Respondent no. 1 has been granted compensation to the extent of 100% towards loss of functional disability; in view of the report in Rajesh and Others Vs. Rajbir Singh and Others, , Respondent no. 1 was entitled to nominal compensation towards non-pecuniary damages which has been awarded by the Claims Tribunal in the case.

8. The compensation is recomputed as hereunder:

9. The overall compensation thus, comes to Rs. 13,11,096/-.

10. The compensation is therefore, reduced by Rs. 5,70,024/-.

11. The excess amount of Rs. 5,70,024/- along with proportionate interest shall be refunded to the Appellant Insurance Company.

12. It is brought to the notice of this Court that 50% of the awarded amount has already been released to Respondent no. 1. Rest of the amount payable to Respondent no. 1 shall be held in Fixed Deposit for a period of 4, 8 and 12 years in equal proportion.

13. The appeal is allowed in above terms.

14. Pending applications also stand disposed of.

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

