

(2012) 07 DEL CK 0176

In the Delhi High Court

Case No : MAC App. 390 of 2011 and With MAC. APP. 539 of 2012

Rakhi

APPELLANT

Vs

Satish Kumar and Others
 ICICI Lombard General
Insurance Co. Ltd. Vs Rakhi and Others

RESPONDENT

Date of Decision : 16-07-2012

Acts Referred:

Citation : (2012) 6 ILR Delhi 643

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

Bench : Single Bench

Advocate : S.N. Parashar and Ms. Rameeza Hakeem in MAC. app. 539/2012, for the Appellant; Rameeza Hakeem, Advocate for the Respondent No.3 Insurance Company. Mr. Atul Nanda, Amicus Curiae and Mr. S.N. Parashar, Advocate in MAC. APP. 539/2012, for the Respondent

Judgement

G. P. Mittal, J.—These two Appeals (MAC. APP. No.390/2011 and MAC. APP. No.539/2012) arise out of a judgment dated 04.01.2011 whereby a compensation of Rs. 7,04,393/- was awarded in favour of Ms. Rakhi and other Claimants (in MAC. APP. 390/2011) for the death of Gajender Pal Singh who died in an accident which occurred on 08.07.2008. By impugned judgment, the Motor Accident Claims Tribunal(the Claims Tribunal) found that the accident was caused on account of rash and negligent driving of bus No. DL-1PB-9008 by the First Respondent. During inquiry before the Claims Tribunal, a salary certificate Ex.PW1/3 was produced to show that the deceased was working as a Security Supervisor and was getting a salary of Rs. 4,000/- per month. The Claims Tribunal found that the deceased was a matriculate. The minimum wages of a matriculate on the date of the accident were Rs. 4,081/- per month. Thus, the Claims Tribunal took the deceased's income to be Rs. 4,081/- per month, deducted 1/4th towards personal and living expenses (as the number of dependents were four) and adopted a multiplier of 17 (as the deceased was aged 27 years) to compute the loss of dependency as Rs. 6,24,393/-. In addition, the Claims Tribunal awarded a sum of Rs. 10,000/- towards medical expenses as the

deceased remained under treatment in Fortis Hospital before he succumbed to the injuries; Rs. 40,000/- towards loss of love and affection, Rs. 10,000/- each towards loss of consortium, funeral expenses and loss to estate. The Claims Tribunal opined that the Claimants were not entitled to any addition on account of future prospects as the deceased was in private employment.

2. For the sake of convenience, the Appellants in MAC. APP. No.390/2011(for enhancement of compensation) shall be referred to as the Claimants and the Cross-Objection (ICICI Lombard General Insurance Co. Ltd.) shall be referred to as the Insurance Company.

3. The finding on negligence has not been challenged in the Cross-Objections. The same, therefore, becomes final between the parties.

4. The following contentions are raised on behalf of the Claimants:

(i) The Claims Tribunal should have considered the vocation of the deceased while assessing the damages to the Claimants.

(ii) The Claims Tribunal ought not to have granted the compensation on the basis of minimum wages; future prospects of the deceased and increase in salary on account of inflation should also have been considered.

5. On the other hand, on behalf of the Insurance Company it is urged that the salary certificate Ex.PW1/3 proved the deceased's income to be Rs. 4,000/- per month. The Claims Tribunal fell into error in awarding compensation on the basis of minimum wages which were Rs. 4,081/- per month.

6. It is urged by the learned counsel for the Claimants that the salary of a person in private employment is also bound to increase with the passage of time as was observed by the Supreme Court in Santosh Devi Vs. National Insurance Company Ltd. and Others, . It is contended that the judgment of this Court in Smt Dhaneshwari and Another Vs. Tejeshwar Singh and Others etc. etc., decided on 07.03.2012 and Rattan Lal Mehta v. Rajinder Kapoor & Anr. II (1996) ACC 1 (DB) were impliedly overruled by the Supreme Court in Santosh Devi (Supra) where it was held that although the increase in the salaries in private sector did not keep pace with the increase in the salary of the Government employees, but with the passage of time there is increase in the salary of the persons employed in organized and unorganized sectors on account of inflation and in the income of the self-employed persons.

7. Per contra, it is contended by the learned counsel for the Respondent Insurance Company that Santosh Devi(supra) did not deal with the case of minimum wages. The observations of the Supreme Court in the said case must be treated as being confined to the facts of that case instead of laying down the law that benefit of inflation is to be given to the persons getting fixed salary or who are self-employed(i.e. skilled and unskilled worker, barber, blacksmith, cobbler, mason, carpenter, etc. etc.).

8. Mr. Atul Nanda, the learned Amicus points out that 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, down to Bijoy Kumar Dugar Vs. Bidyadhar Dutta and Others, it was held that increase on account of future prospects is to be given only when there is evidence with regard to bright future prospects. It is urged that the Supreme Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, referred to Susamma Thomas (supra), Sarla Dixit (supra) and various other judgments and tried to bring about uniformity in grant of compensation to the victims of road accidents while holding that increase on account future prospects can be granted only on the basis of evidence in this regard.

9. It is contended that the judgments in Susamma Thomas(supra), Sarla Dixit(supra) Bijoy Kumar Dugar(supra), Sarla Verma(supra) and Santosh Devi(supra) were rendered by a two Judge Bench of the Supreme Court. The earlier decision in Susamma Thomas(supra), Sarla Dixit(supra) and Bijoy Kumar Dugar must be taken as binding precedent as they were not referred in Santosh Devi(supra). If the two Judge Bench in Santosh Devi(supra) did not agree with Sarla Verma(supra), a reference should have been made to a larger Bench. It is stated that the judgment in Santosh Devi(supra) must be taken per incuram. Reliance is placed on Safiya Bee Vs. Mohd. Vajahath Hussain alias Fasi, and Union of India (UOI) and Others Vs. S.K. Kapoor, where it was held that if a Bench of equal strength did not agree with the view taken by a coordinate Bench of equal strength (in an earlier decision), judicial discipline and practice required them to refer the issue to a larger Bench. It was held that the learned Judges were not right in overruling the judgment by a coordinate Bench of equal strength.

10. In Dhaneshwari (supra) this Court considered various Single Bench decisions of this Court including Smt. Anari Devi Vs. Shri Tilak Raj and Another, National Insurance Co. Ltd. v. Pooja & Ors., II (2006) ACC 382 (2007 ACJ 1051), Om Kumari & Ors. v. Shish Pal & Ors, 140 (2007) DLT 62, Narinder Bishal & Anr. v. Rambir Singh & Ors., MAC APP. 1007-08/2006, decided on 20.02.2008, New India Assurance Co. Ltd. v. Vijay Singh MAC APP. 280/2008 decided on 09.05.2008; Oriental Insurance Company Limited v. Smt. Rajni Devi & Ors. MAC APP.286/2011 decided on 06.01.2012; Smt. Gulabeeya Devi v. Mehboob Ali & Ors. MAC APP.463/2011 decided on 10.01.2012 and IFFCO TOKIO Gen. Ins. Co. Ltd. v. Rooniya Devi & Ors. MAC APP.189/2011 decided on 30.01.2012 and a Division Bench decisions of this Court in Delhi Transport Corporation and Anr. v. Kumari Lalita 22 (1982) DLT 170 (DB) and Rattan Lal Mehta v. Rajinder Kapoor & Anr. II (1996) ACC 1 (DB). This Court held that Rattan Lal Mehta (supra) being a Division Bench decision of this Court which laid down that future inflation was built-in "in the multiplier method" was a binding precedent as there was no contrary judgment of the Supreme Court on this point. Para 38 of the report in Dhaneshwari(supra) is extracted hereunder:

38. The Division Bench went on to add that multiplier takes care of inflation. In fact, when the rates of interest are high as in the Indian context, any multiplier above 15 would definitely take care of some inflation. Before demonstrating the same in a tabulated form, I would refer to the relevant portion of the report in Rattan Lal Mehta (*supra*) hereunder:-

Multiplier takes care of inflation

The mathematical formula which is used in the law of Economics (See Prof. A Samuelson of the Massachusetts Institute of Technology in his Textbook on Economics (10th Ed. 1980 at p. 609) shows that the discount rate for discounting future payments to present value occurs in the dominator and that is why a lower interest rate would result in a higher multiplier and that is why the "real rate" of interest enunciated by Fisher was applied by Lord Diplock in *Mallet v. Mc Monagle*, 1970 AC 166. That case has been followed by our Supreme Court in *M.P.S.R.T.C. v. Sudhakar*, AIR 1977 SC 1189 and in *KSRTC v. Susamma Thomas* (*supra*). The rate adopted is of a "stable period of currency" say 4% or 5% so that multipliers will be larger and help full compensation. It must be noted here that if we adopt a higher rate of interest for reducing future payments to present values the multiplier will be very small, as the rate of interest occurs, in the formula, in the denominator. That is why a smaller rate of interest applicable to stable periods is prescribed by Economists of the highest repute like Fisher or Prof. Samuelson and in all books dealing with Economics and Insurance. This is also the principle in pension commutations. Government of India has applied a rate of 3.5% or 4.5% only. Otherwise if higher rates of interest are applied pension commutations will get reduced to smaller figures. Superior Courts in England, Australia, Canada and USA have accepted this principle of Economics and held that rate of discount for converting future payments to present value must relate to stable periods of currency.

29. In a celebrated passage Lord Diplock said "In estimating the loss, money should be treated as retaining its value at the date of the Judgment and in calculating the present value of annual payments which would have been received in future years, interest rates appropriate to time of stable currency such as 4 per cent to 5 per cent should be adopted". That was to be the discount rate for reducing future earnings/losses to present value. In England it was to be 4% or 5%. In Australia, in *Todorovic vs. Waller*, (1981) 150 C.L.R. 402, the High Court followed Lord Diplock's judgment and advocated a discount rate of 3% for converting future payments to present value. In the Canadian trilogy of cases, referred to earlier, the Diplock theory was accepted and a rate of 7% was applied. In U.S.A. the same principles were set out in *Chesapeake & Ohio Rly vs. Kelly* (1916) 241 U.S. 485 and recently in *Jones and Laughlin vs. Pfeifer*, 462 U.S. 523 (1983), proposing 3%.

30. In *Bhagwandas* case, AIR 1988 99 after referring to the rate applied by Government of India in regard to pension commutations and the other data relating to inflation, a "real rate" of 4% was applied in our country and a

multiplier Table was worked out on that basis. The above judgment was affirmed by a Division Bench in *Nirmala Narsava and Others Vs. Vilas Ramachandra Shangda and Others* by Jeevan Reddy, J. (as he then was) and V.N. Rao, J. The multipliers evolved in *Bhagwanda's* case compare very favourably with the statutory multiplier Table published in the amendment to the Motor Vehicles Act in 1994. A smaller discount rate relatable to a stable period of currency reduces future payments (say) of 1997, 1998 and so on, by giving a higher multiplier in present and leaves it to the recipient of the money to make a proper investment today of the said monies. There is voluminous literature on this subject (See: *Inflation, Taxation & Damage Assessment* (1980) Can B. Rev. 280; 1974 *Economic Journal* p. 130 by R. Kidner & K. Richards; *Damages for Personal Injury & the Effect of Future Inflation* (1982) 56 Aust L.J. 168; *Economic Analysis vs. Court room Controversy, The Present Value of Future Earnings* : John A. Carlson Vol. 62 ABAJ 628; *Tort Damages for Loss of Future Earnings* (1986) 34 Amer J. Comp. L (Supp) 141; *Economic Theory & Present Value of Future Lost Earnings* : Anderson & Roberts (1985) U. Miami L.R. 725; A plain English approach to loss of Future Earning Capacity (1985) 24 Washburn LJ. 253;) See also leading books, Munkman; Kemp P. Keap; MC Gregor; Warfield; John A Fleming etc.

31. After the pecuniary damages are arrived at, Courts are also awarding 12% interest generally on the sum arrived at. Together with that interest, the amount comes into the plaintiffs' hands.

No deduction is to be made from the sum arrived at by using multiplier:

32. As the statutory multiplier reduces, by means of a mathematical formula (see the formula explained in *Bhagwandas Vs. Mohd. Arif*, the future amounts to present value, there is no need to further deduct 1/3 or 1/4. The multiplier takes in not only mortality and future inflation but also the fact that the claimants are receiving an accelerated payment once and for all". (emphasis supplied)

11. This Court tried to demonstrate that although the inflation was built-in "in the multiplier method" but in the Indian context where the inflation was very high, the multiplier method did not take care of the inflation completely. This Court made certain tables i.e. one to assume the real value of money at 4%, i.e. inflation @ 4% per annum and rate of interest @ 8% per annum where the compensation awarded lasted for over 30 years which will happen when a person dies young; and the second table where the actual rate of interest and actual rate of inflation was taken where the compensation awarded lasted for 22 years which showed that the multiplier method on account of inflation (in this country) did not take care of the loss of dependency fully. Para 41 of the report in *Dhaneshwari* (supra) is extracted hereunder:

41. I have obtained the Bank rates of interest (of Nationalized Banks) and compared it with the inflation prevailing in the country. I have attempted three tables to demonstrate whether the rate of interest in the Indian context takes

care of the inflation or not.

TABLE - I

? It is assumed that the deceased who is aged 26 years dies leaving behind a widow, a mother and two minor children.

? In this Table a notional amount of Rs.800/- is taken to be the income of the deceased and therefore the capital amount is arrived at Rs.1,22,400/- (Rs. 800 - 1/4th x 12 x 17).

? The dependency is taken to be Rs. 800 p.m - 1/4th (Rs.600) x 12 = 7200 p.a. in 1990.

? Further, a notional interest and inflation rate of 8% and 4% respectively, is taken into consideration which is an assumption of "real rate of interest" (actual inflation rate - actual interest rate) in stable economy.

? The dependency is increased according to the inflation i.e. 4% and the interest on the Capital amount is taken @ of 8%.

The compensation lasts for over 30 years.

S.No

Year

Capital Amount

Interest Received

Dependency

Rate of Interest

Inflation

Excess Amount

1.

1990

1,22,400

9,792

=600x12 =7,200

8%

4%

2,592

2.

1991

1,24,992

9,999

$=7,200+288 =7,488$

8%

4%

2,511

3.

1992

1,27,503

10,200

$=7,488+299 =7,787$

8%

4%

2,413

4.

1993

1,29,916

10,393

$=7,787+311 =8,098$

8%

4%

2,295

5.

1994

1,32,211

10,576

$=8,098+324$

8%

4%

2,155

=8,421

6.

1995

1,34,366

10,749

=8,421+336 =8,757

8%

4%

1,992

7.

1996

1,36,358

10,908

=8,757+350 =9,107

8%

4%

1,801

8.

1997

1,38,159

11,052

=9,107+364 =9,471

8%

4%

1,581

9.

1998

1,39,740

11,179

$$=9,471+378 =9,849$$

8%

4%

1,330

10

1999

1,41,070

11,285

$$=9,849+393 =10,242$$

8%

4%

1,043

11.

2000

1,42,113

11,369

$$=10,242+409 =10,651$$

8%

4%

718

12.

2001

1,42,831

11,426

$$=10,651+426 =11,077$$

8%

4%

349

13.

2002

1,43,180

11,454

=11,077+443 =11,520

8%

4%

-65

14.

2003

1,43,114

11,449

=11,520+460 =11,980

8%

4%

-530

15

2004

1,42,583

11,406

=11,980+479 =12,459

8%

4%

-1,053

16.

2005

1,41,530

11,322

=12,459+498 =12,957

8%

4%

-1,634

17.

2006

1,39,895

11,191

=12,957+518 =13,475

8%

4%

-2,283

18

2007

1,37,611

11,008

=13,475+539 =14,014

8%

4%

-3,005

19

2008

134605

10,768

=14,014+560 =14,574

8%

4%

-3,805

20

2009

1,30,799

10,463

=14,574+582 =15,156

8%

4%

-4,692

21.

2010

126106

10,088

=15,156+606 =15762

8%

4%

-5,673

22.

2011

1,20,432

9,634

=15,762+630 =16,392

8%

4%

-6,757

23.

2012

1,13,674

9,093

=16,392+656 =17,048

8%

4%

-7,954

24.

2013

1,05,719

8,457

=17048+681

8%

4%

-9,272

=17,729

25.

2014

96,447

7,715

=17,729+710 =18,439

8%

4%

-10,723

26.

2015

85,723

6,857

=18,439+737 =19,176

8%

4%

-12,318

27.

2016

73,404

5,872

=19,176+767 =19,943

8%

4%

-14,070

28.

2017

59,333

4,746

=19,943+798 =20,741

8%

4%

-15,994

29.

2018

43,338

3,467

20,741+829 =21,570

8%

4%

-18,102

30.

2019

25,235

2,018

21,570+863 =22,433

8%

4%

-20,414

31.

2020

4,820

22,433+897 =23,330

8%

4%

TABLE - II

? In this Table a notional amount of Rs.800/- is taken to be the income of the deceased and therefore the capital amount is arrived at Rs.1,22,400/- (Rs. 800 - $\frac{1}{4}$ th x 12 x 17).

? The dependency is taken to be Rs.800/- p.m - $\frac{1}{4}$ th (Rs.600) x 12 = 7200 in 1990. For the subsequent years the actual inflation rate is applied to increase the dependency accordingly.

? The capital amount is being increased as per the actual Bank interest rate on long term fixed deposit.

? The compensation lasts for about 21 years.

S.No

Year

Capital Amount

Interest Received

Dependency

Rate Of Interest

Inflation

Excess Amount

1.

1990

1,22,400

12,240

=600x12 =7,200

10%

8.9%

5,040

2.

1991

1,27,440

14,018

=7,200+993 =8,193

11%

13.8%

5,825

3.

1992

1,33,265

16,658

=8,193+958 =9,151

12.5%

11.7%

7,507

4.

1993

1,40,772

14,781

=9,151+576

10.5%

6.3%

5,054

=9,727

5.

1994

1,45,826

14,582

=9,727+992 =10,719

10%

10.2%

3,863

6.

1995

1,49,689

17,363

=10,719+1,093 =11,812

11.6%

10.2%

5,551

7.

1996

1,55,240

19,560

=11,812+1,051 =12,863

12.6%

8.9%

6,697

8.

1997

1,61,937

18,298

=12,863+939 =13,802

11.3%

7.3%

4,496

9.

1998

1,66,433

18,307

=13,802+1821 =15,623

11%

13.2%

2,684

10

1999

1,69,117

17,757

=15,623+718 =16,341

10.5%

4.6%

1,416

11.

2000

1,70,533

15,689

=16,341+637 =16,978

9.2%

3.9%

-1,288

12.

2001

1,69,244

14,047

=16,978+747 =17,725

8.3%

4.4%

-3,677

13.

2002

1,65,566

11,424

=17,725+655 =18,380

6.9%

3.7%

-6,955

14.

2003

1,58,610

9,199

=18,380+698 =19,078

5.8%

3.8%

-9,878

15.

2004

1,48,731

8,180

=19,078+744 =19,822

5.5%

3.9%

-11,641

16.

2005

1,37,089

8,225

=19,822+1,228 =21,050

%

6.2%

-12,824

17.

2006

1,24,264

8,449

=21,050+1,326 =22,376

6.8%
6.3%
-13,926
18.
2007
1,10,337
9,930
 $=22,376+1,409 =23,785$
9%
6.3%
-13,855
19.
2008
96,482
8,876
 $=23,785+1,974 =25,759$
9.2%
8.3%
-16,882
20.
2009
79,599
6,367
 $=25,759+2,781 =28,540$
8%
10.8%
-22,172
21.
2010
57,426

4,307

=28,540+3,396 =31,936

7.5%

11.9%

-27,628

22.

2011

29,797

2,681

=31,936+3,864 =35,800

9%

12.1%

-33,118

23.

2012

-3,321

9%

9.2%

12. The learned Single Judges of this Court while granting increase in the income on account of inflation distinguished between future prospects and increase on account of inflation. The observations of the learned Single Judges in National Insurance Co. Ltd. Vs. Pooja and Others, 140 (2007) DLT 62, Narinder Bishal & Anr. v. Rambir Singh & Ors., MAC APP. 1007-08/2006, decided on 20.02.2008 and New India Assurance Co. Ltd. v. Vijay Singh MAC APP. 280/2008 decided on 09.05.2008 as taken in Dhaneshwari(supra) are extracted hereunder:

6. Then, there is a report of National Insurance Co. Ltd. v. Pooja & Ors., II (2006) ACC 382 (2007 ACJ 1051) decided by the Learned Single Judge on 19.04.2006. Here again, increase in the minimum wages was given holding as under:-

15. The deceased expired in 1999. At that time he was 30 years old. Due to inflation and rapid economic progress, minimum wages have been going up. The deceased had long working life ahead of him. It was natural that his earnings in normal course would have gone up in the next about 30 years. Loss of dependency is calculated keeping in view the monetary loss suffered by the

dependants in future. Therefore, Id. Tribunal was justified in not ignoring the possibility of increase in earnings/income due to inflation, price rise, etc. of the deceased and taking this factor into consideration.

7. In *Om Kumari & Ors. v. Shish Pal & Ors*, 140 (2007) DLT 62, while giving the increase on account of minimum wages, another Learned Single Judge held as under:-

16. The future prospects may not be linked to promotional avenues but certainly would be linked to the inflation and increased wages over the years.

17. I have before me the minimum wages notified under the Minimum Wages Act, 1948, which show that pertaining to matriculates, minimum wages have risen from Rs. 325/- per month as on 1.1.1980 to Rs. 1,014 per month as on 1.5.1989. The same have risen to Rs. 2,796 per month as on 1.2.1999. Between 1.1.80 and 1.5.1989, the percentage increase is slightly over 200. Over the next 10 years, percentage increase is approximately 180.

18. Minimum wages are notified keeping into account the inflationary trends and cost indices. These are the minimum wages which law presumes would be required for a person to sustain himself at the minimum level of subsistence."

8. In *Narinder Bishal & Anr. v. Rambir Singh & Ors.*, MAC APP. 1007-08/2006, decided on 20.02.2008, a distinction was drawn between future prospects and increase granted on account of inflation by the learned Single Judge of this Court. It was held that minimum wages has co-relation with the growth and development of the nation's economy, postulating increase in the price index, reduction of purchasing power and depreciation in the value of currency. This Court granted 50% increase in the minimum wages holding as under:-

16. The future prospects would necessarily mean advancement in future career, earnings and progression in one's life. It could be considered by seeing, from which post a person began his career, what avenues or prospects he has while being in a particular avocation and what targets he/she would finally achieve at the end of his career. The promotional avenues, career progression, grant of selection grades etc. are some of the broad features for considering one's future prospects in one's career.

17. The minimum wage, in the very context of economy has a correlation with the growth and development of the nation's economy, postulating increase in the price index, reduction of purchasing power with the denunciation of currency value and consequent fixation of minimum wages giving some periodical increase so as to ensure sustenance and survival of the workman class. Keeping this in view, under no circumstance the revision of minimum wages can be treated on the same footing with the factor of future prospects.

18. For instance, minimum wages of unskilled workman in the year 2000 were Rs. 2524/- under the Minimum Wages Act. The said minimum wages in the year 2007 for the same class of unskilled workman came to be Rs. 3470/- under the

Act. This increase is not due to any promotion of unskilled workman or any kind of advancement in his career but the same are due to increase in the price index and cost of living which are the determining factors taken into consideration for increasing the wages under the Minimum Wages Act. The nature of job of unskilled workman will not change as the same shall remain unchanged. The same principle may be true even in the case of business or trade or other such allied activities where the future prospects of the deceased can be considered on the basis of his assets, income tax return, wealth tax return, balance sheet etc. But as far as the increase in the minimum wages is concerned the same takes into consideration the price index and the inflationary trends and the same have no correlation with the future prospects of a skilled, semi-skilled or an unskilled workman.

19. In the light of the above discussion, I find myself in agreement with the argument of counsel for the appellants that in the given facts and circumstances of the case, the Tribunal ought to have taken into consideration the revision in the minimum wages so as to determine just and fair compensation. In all cases where the claimants are able to sufficiently establish the income of the deceased, the benefit of granting any compensation for future prospects can be taken into consideration only when sufficient and reliable evidence is placed and proved by the claimants as per the dictum laid down in *Bijoy Kumar Dugar Vs. Bidyadhar Dutta and Others*, . While in other cases where in the absence of sufficient evidence, the Tribunal applied the yardstick of minimum wages, in all such cases, the Tribunals can take judicial notice of the revision of minimum wages, as laid down under the Minimum Wages Act."

9. In *New India Assurance Co. Ltd. v. Vijay Singh* MAC APP. 280/2008 decided by this Court on 09.05.2008, yet another Learned Single Judge relying on *Narinder Bishal* (supra) also drew a distinction between the grant of future prospects which is given on account of advancement in career and progression in employment, on the one hand and increase in the minimum wages which is granted on account of inflation on the other hand. The learned Single Judge held as under:-

The future prospects would necessarily mean advancement in future career, earnings and progression in one's life. It could be considered by seeing, from which post a person began his career, what avenues or prospects he has while being in a particular avocation and what targets he/she would finally achieve at the end of his career. The promotional avenues, career progression, grant of selection grades etc. are some of the broad features for considering one's future prospects in one's career.

The minimum wage, in the very context of economy has a correlation with the growth and development of the nation's economy, postulating increase in the price index, reduction of purchasing power with the denunciation of currency value and consequent fixation of minimum wages giving some periodical increase so as to ensure sustenance and survival of the workman class. Keeping this in

view, under no circumstance the revision of minimum wages can be treated on the same footing with the factor of future prospects.

10. In all cases where the claimants are able to sufficiently establish the income of the deceased, the benefit of granting any compensation for future prospects can be taken into consideration only when sufficient and reliable evidence is placed and proved by the claimants as per the dictum laid down in *Bijoy Kumar Dugar Vs. Bidyadhar Dutta and Others*, While in other cases, where in the absence of sufficient evidence, the Tribunal applies the yardstick of minimum wages, in all such cases, the Tribunals can take judicial notice of the revision of minimum wages, as laid down under the Minimum Wages Act.

13. In *Reshma Kumari and Others Vs. Madan Mohan and Another*, the Supreme Court observed that unlike other developed countries, the interest rates in India do not rise with the rise in inflation and posed a question whether the practice of taking inflation into consideration was wholly incorrect? Paras 47, 48 and 49 of the report are extracted hereunder:

47. One of the incidental issues which has also to be taken into consideration is inflation. Is the practice of taking inflation into consideration wholly incorrect? Unfortunately, unlike other developed countries in India there has been no scientific study. It is expected that with the rising inflation the rate of interest would go up. In India it does not happen. It, therefore, may be a relevant factor which may be taken into consideration for determining the actual ground reality. No hard-and-fast rule, however, can be laid down therefore .

48. A large number of English decisions have been placed before us by Mr. Nanda to contend that inflation may not be taken into consideration at all. While the reasonings adopted by the English courts and its decisions may not be of much dispute, we cannot blindly follow the same ignoring ground realities.

49. We have noticed the precedents operating in the field as also the rival contentions raised before us by the learned counsel for the parties with a view to show that law is required to be laid down in clearer terms.

14. In its subsequent reports in *Laxman v. Oriental Insurance Co. Ltd.*, (2011) 10 SCC 756, *Sanjay Batham v. Munnalal Parihar*, (2011) 10 SCC 665, *Govind Yadav Vs. The New India Insurance Company Limited*, and *Ibrahim v. Raju*, (2011) 10 SCC 634 also the Supreme Court referred to para 47 of the report in *Reshma Kumari* (supra) but did not lay down any guidelines as to how and upto what extent the inflation is to be taken into consideration in awarding a just compensation.

15. Thus, in the absence of any judgment by the Supreme Court whether inflation was to be considered or not for grant of compensation to the victims of the accidents, this Court held that the Division Bench Judgment of this Court in *Rattan Lal Mehta*(supra) was a binding precedent.

16. It is true that a coordinate Bench of equal strength cannot overrule an earlier

judgment. The question is whether the judgment in Santosh Devi(supra) is contrary to the judgments in Susamma Thomas(supra), Sarla Dixit(supra) Bijoy Kumar Dugar(supra), Sarla Verma(supra). In Susamma Thomas (supra), evidence was produced to show that with the passage of time, the monthly salary of deceased would have risen from Rs. 103/- per month to 2,000/- per month. In Sarla Dixit(supra), the deceased was employed as a Captain in the Indian Army. His salary was Rs. 1543/- per month. Evidence was led to prove that he had meritorious record. The compensation was awarded assuming his salary to be Rs. 2200/- per month. In Bijoy Kumar Dugar(supra), the Supreme Court held increase in compensation for the future prospects can be granted when there is evidence with regard to the same. Paras 9 and 11 of the report are extracted hereunder:

9. We have gone through the ratio of the above decisions relied upon by the claimants in support of the submission for the enhancement of the amount of compensation. In G.M., Kerala SRTC case the claimants had satisfactorily proved on record that the deceased person in that case had a more or less stable job in the newspaper establishment of Malayala Manorama on a monthly salary of Rs. 1032/-. On the basis of the evidence found on record in regard to the prospects of the advancement in the future career of the deceased, this Court has made higher estimate of monthly income at Rs. 2000/- per month as the gross income and granted relief to the claimants.

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11. In the present case, as noticed, there is no evidence brought on record by the claimants to show the future prospects of the deceased. This contention, in our view, is not tenable to sustain it.

17. In Sarla Verma(supra), the case related to the death of a Scientist who was in Government Service. 50% increase was granted in the deceased's salary while awarding loss of dependency. In para 24 of the report, it was observed that where the deceased was self-employed or a person getting fixed salary the Courts would usually consider the actual income at the time of his death for the purpose of computing the loss of dependency. The question of granting increase on account of inflation to the income of a person getting a fixed salary or a self employed, i.e. skilled and unskilled worker, like barber, blacksmith, cobbler, mason, carpenter, etc. etc. at the time of his death was not before the Supreme Court. The Supreme Court in Santosh Devi(supra) referred to an earlier decision in R.K. Malik and Another Vs. Kiran Pal and Others, and observed that damages awarded should be an adequate sum of money that would place the party in the same position as if he had not suffered on account of the wrong. Para 12 of the report is extracted hereunder:

12. In R.K. Malik and Another Vs. Kiran Pal and Others, the two Judge Bench while dealing with the case involving claim of compensation u/s 163-A of the Act, noticed the judgments in M.S. Grewal and Another Vs. Deep Chand Sood and

Others, Lata Wadhwa v. State of Bihar (2001) 8 SCC 197, 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 made some of the following observations, which are largely reflective of the philosophy that victims of the road accidents and/or their family members should be awarded just compensation:

In cases of motor accidents the endeavour is to put the dependants/claimants in the pre-accidental position. Compensation in cases of motor accidents, as in other matters, is paid for reparation of damages. The damages so awarded should be adequate sum of money that would put the party, who has suffered, in the same position if he had not suffered on account of the wrong. Compensation is therefore required to be paid for prospective pecuniary loss i.e. future loss of income/dependency suffered on account of the wrongful act. However, no amount of compensation can restore the lost limb or the experience of pain and suffering due to loss of life. Loss of a child, life or a limb can never be eliminated or ameliorated completely.

To put it simply-pecuniary damages cannot replace a human life or limb lost. Therefore, in addition to the pecuniary losses, the law recognises that payment should also be made for non-pecuniary losses on account of, loss of happiness, pain, suffering and expectancy of life, etc. The Act provides for payment of "just compensation" vide Sections 166 and 168. It is left to the courts to decide what would be "just compensation" in the facts of a case.

18. With regard to inflation, the Supreme Court observed that because of the inflation, the salaries of Government and public sector employees have increased manifold and also for those working in the private sector there has been an increase to some extent though not keeping pace with the increase in the Government sector. It was observed that the persons on a fixed salary or self-employed, would also increase the cost of their labour and they would get an increase of 30% while computing the loss of dependency. Para 14 of the report is extracted hereunder:

14.....In our view, it will be naive to say that the wages or total emoluments/income of a person who is self-employed or who is employed on a fixed salary without provision for annual increment, etc., would remain the same throughout his life. The rise in the cost of living affects everyone across the board. It does not make any distinction between rich and poor. As a matter of fact, the effect of rise in prices which directly impacts the cost of living is minimal on the rich and maximum on those who are self-employed or who get fixed income/emoluments. They are the worst affected people. Therefore, they put extra efforts to generate additional income necessary for sustaining their families. The salaries of those employed under the Central and State Governments and their agencies/instrumentalities have been revised from time to time to provide a cushion against the rising prices and provisions have been made for providing security to the families of the deceased employees. The salaries of those

employed in private sectors have also increased manifold. Till about two decades ago, nobody could have imagined that salary of Class IV employee of the Government would be in five figures and total emoluments of those in higher echelons of service will cross the figure of rupees one lac. Although, the wages/income of those employed in unorganized sectors has not registered a corresponding increase and has not kept pace with the increase in the salaries of the Government employees and those employed in private sectors but it cannot be denied that there has been incremental enhancement in the income of those who are self-employed and even those engaged on daily basis, monthly basis or even seasonal basis. We can take judicial notice of the fact that with a view to meet the challenges posed by high cost of living, the persons falling in the latter category periodically increase the cost of their labour. In this context, it may be useful to give an example of a tailor who earns his livelihood by stitching cloths. If the cost of living increases and the prices of essentials go up, it is but natural for him to increase the cost of his labour. So will be the cases of ordinary skilled and unskilled labour, like, barber, blacksmith, cobbler, mason etc. Therefore, we do not think that while making the observations in the last three lines of paragraph 24 of Sarla Verma's judgment, the Court had intended to lay down an absolute rule that there will be no addition in the income of a person who is self-employed or who is paid fixed wages. Rather, it would be reasonable to say that a person who is self-employed or is engaged on fixed wages will also get 30 per cent increase in his total income over a period of time and if he / she becomes victim of accident then the same formula deserves to be applied for calculating the amount of compensation."

19. Thus, the observations made by the Supreme Court in para 24 of the report in Sarla Verma were explained and distinguished and it was said the persons getting fixed salary and self-employed persons would also increase their wages with the passage of time on account of inflation. The question of increase on account of inflation was not considered by the Supreme Court in Susamma Thomas(supra), Sarla Dixit(supra) Bijoy Kumar Dugar(supra) and Sarla Verma(supra). It may be noticed that minimum wages of an unskilled worker on 01.01.1980 were Rs. 240/- which rose to Rs. 6,656/- on 01.10.2011. Thus, the increase in income on account of inflation in our country is very fast. In para 47 to 51 of Dhaneshwari(supra), this Court observed as under:

47. I have obtained data which shows that during the last 26 years the income of the same category of employees has grown up by about 15 times on account of inflation and growth in the economy.

Sl. No.

Group of Employees

Initial salary (including allowances) as on 1st January, 1986

Initial salary (including allowances) as on 1st January, 2012

1.

Group D

930/-

14,108/-

2.

LDC

1245/-

15,480/-

3.

Section Officer

2550/-

36,650/-

4.

Under Secretary to Govt. of India

3700/-

52,714/-

48. Apart from this almost everybody working in the govt. department gets at least 4 to 5 promotions during their tenure. A Clerk at least becomes a Section Officer, an Assistant becomes a Director in the Govt. of India if not a Joint Secretary, a Civil Servant (IAS) becomes an Additional Secretary, if not a Secretary. In private sectors pastures are much greener for some and not so rosy for the others.

49. The question is whether in all cases, the Courts are providing compensation which can be said to be just and fair.

50. It will be seen that the compensation is far less than the just compensation as envisaged under the Act mainly on account of inflationary trend in this country. Though the multiplier method does take care of future inflation as held by the Division Bench of this Court in Rattan Lal Mehta (supra) yet, on account of inflation which remains in double digits in our country most of the times, even after the increase granted on account of future prospects the compensation awarded is not able to take care of the actual loss of dependency.

51. It is respectfully submitted that I am bound by the Division Bench judgment of this Court in Rattan Lal Mehta (supra) which on the aspect of the multiplier taking care of future inflation was not brought to the notice of this Court earlier and more importantly escaped my attention. Thus, increase in minimum wages

on account of inflation given by the learned Single Judges of this Court in various cases including the one which have been extracted hereinabove, was not permissible.

20. In my view, there is no conflict between the earlier judgments of the Supreme Court in *Susamma Thomas*(supra), *Sarla Dixit*(supra) *Bijoy Kumar Dugar*(supra) and *Sarla Verma*(supra) which dealt with the increase in the income on account of future prospects and *Santosh Devi*(supra) which dealt with the increase in income due to inflation. Thus, on the basis of the judgment in *Santosh Devi*(supra) it can very well be said that the persons who are getting fixed salary or who are self employed as menial, skilled and unskilled workers, like barber, blacksmith, cobbler, mason, carpenter, etc. etc. would be entitled to an increase in the income to the extent of 30% on account of inflation when the deceased or the victim is aged upto 50 years.

21. Turning to the facts of the instant case. The deceased's income was proved to be Rs. 4,000/- per month by virtue of the salary certificate Ex.PW1/3. There was no evidence of his bright future prospects. The Claimants are entitled to an increase of 30% in the salary on account of inflation. The loss of dependency works out to be Rs. 7,95,600/- (Rs. 4000 + 30% x 3 ? 4 x 12 x 17).

22. A compensation of Rs. 40,000/- was awarded towards loss of love and affection. Generally, a sum of Rs. 25,000/- is awarded under this head. In the absence of any challenge to this finding, I would not like to interfere with the same. The Claims Tribunal awarded a sum of Rs. 10,000/- towards the expenditure for the deceased's treatment, till he succumbed to the injuries, and a sum of Rs. 10,000/- each was awarded towards loss to estate, loss to consortium and funeral expenses. The overall compensation thus comes to Rs. 8,75,600/-.

23. The enhanced compensation of Rs. 1,71,207/- shall carry interest @ 7.5% per annum as awarded by the Claims Tribunal. The enhanced compensation shall enure for the benefit of the deceased's widow i.e. Claimant Rakhi. 75% of the enhanced compensation shall be held in Fixed Deposit for a period of three years, six years and nine years in equal proportion. The Claimants shall be entitled to quarterly interest which shall be utilized by her for her own and for the benefit of the three minor children.

24. The ICICI Lombard General Insurance Co. Ltd. is directed to deposit the enhanced amount along with interest in the name of Claimant with UCO Bank, Delhi High Court Branch within six weeks.

25. The Appeals are disposed of in above terms.

26. The statutory amount of Rs. 25,000/- shall be refunded to the Appellant ICICI Lombard General Insurance Co. Ltd. The pending Applications stand disposed of.