
(2015) 02 DEL CK 0133
In the Delhi High Court
Case No : MAC. APP. 649/2014

Shriram General Insurance Co. Ltd. APPELLANT
Vs
Kusum Lata and Others RESPONDENT

Date of Decision : 05-02-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 2(c)

Citation : (2015) 2 ACC 371

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

Bench : Single Bench

Advocate : Manish Kaushik, Advocate for K.L. Nandwani, for the Appellant; Rana Kunal and S.S. Malik, Advocates for the Respondent

Final Decision : Disposed off

Judgement

G.P. Mittal, J.—The appeal is directed against the judgment dated 02.04.2014 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby compensation of Rs.12,13,300/- was awarded in favour of Respondents no.1 to 7 for the death of deceased Narender Kumar, a bachelor who died in a motor vehicular accident which occurred on 29.09.2012.

2. On appreciation of evidence, the Claims Tribunal found that the accident was caused because of rash and negligent driving of the driver of truck bearing registration no. UP-17C-8151. The Claims Tribunal accepted the income of the deceased to be Rs.6656/- per month, deducted 50% towards personal and living expenses, added 50% towards future prospects and applied the multiplier of 18 to compute the loss of dependency as Rs.10,78,300/-. After awarding certain amount towards non-pecuniary damages, the overall compensation of Rs.12,13,300/- was awarded in favour of the Respondents.

3. The following contentions are raised on behalf of the Appellant:-

(i) It was a head on collusion and thus, there was contributory negligence on the part of the driver of the Maruti car bearing registration no. DL-2CN-1057;

(ii) The Claims Tribunal erred in adding future prospects even without any evidence with regard to the same; and (iii) In case of a bachelor, the multiplier ought to have been taken as per the age of the mother of the deceased. The Claims Tribunal erred in adopting the multiplier of 18 as per the age of the deceased.

4. On the other hand, learned counsel for Respondents no.1 to 7 supports the impugned judgment and urges that the compensation awarded is just and reasonable.

NEGLIGENCE

5. It may be mentioned that the offending truck bearing registration no. UP-17C-8151 was being driven by Respondent no.8 (Respondent no.1 before the Claims Tribunal) whereas the Maruti car involved in the accident was being driven by Sumit. Therefore, even if it was a case of negligence of both the drivers, it was not contributory but composite negligence and the victim could have claimed compensation from both or either of the tortfeasors. That may, however, not be relevant in view of the finding on negligence reached by the Claims Tribunal, which I am inclined to affirm.

6. Sumit, who was the driver of the Maruti Car bearing registration no. DL-2CN-1057, filed his Affidavit Ex.PW-1/X and entered the witness box as PW-1. He testified that the offending truck bearing registration no. UP-17C-8151 coming from the side of Muzaffarnagar was being driven in a rash and negligent manner. He stated that as a consequence of the impact, the car driven by him was severely damaged. The witness was cross-examined at length on behalf of the driver and the owner of the offending truck as also on behalf of the Appellant Insurance Company. Not only that, a criminal case was also registered against the driver of the truck no. UP-17C-8151 but the testimony of PW-1 also could not be discredited in cross-examination. The learned counsel for the Appellant Insurance Company refers to the site plan prepared by the IO in the criminal case registered against the driver of the truck. The said site plan was not confronted to PW-1. The same is therefore, of no consequence.

7. It may be noted that in a Claim Petition under Section 166 of the Motor Vehicles Act, 1988 (the Act), negligence is required to be proved on the touchstone of preponderance of probabilities. In the instant case, testimony of PW-1 remained unchallenged. Although, PW-1 was cross-examined on behalf of the owner and the driver of the truck, yet the driver himself did not enter the witness box to tell the manner in which the accident had occurred. In view of this, the findings on negligence reached by the Claims Tribunal cannot be faulted.

COMPENSATION:

8. The deceased was survived by his parents and five minor sisters. The Claims Tribunal deducted 50% towards personal and living expenses. It is evident from the averments made in the Petition and the evidence produced that the five

sisters left by deceased Narender Kumar were minor. It can be noted that in Indian society, when a son grows up, he takes the responsibility of his minor brothers and sisters, particularly, minor sisters.

9. In view of this, in the instant case, deduction towards personal and living expenses ought to have been made as 1/3rd instead of 1/2 as made by the Claims Tribunal.

10. As far as addition towards future prospects is concerned, this Court in *HDFC ERGO General Insurance Co. Ltd. v. Smt. Lalta Devi and Ors.*, MAC. APP. 189/2014 decided on 12.01.2015 dealt with this aspect in great detail. 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 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 Union of India (UOI) and Another Vs. Hansoli Devi and Others, .

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.

11. 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.

12. As far as selection of multiplier is concerned, this Court in Vijay Laxmi and Ors. v. Binod Kumar Yadav and Ors., MAC APP.1148/2011 decided on 03.01.2012 had dealt with the question of multiplier in great detail and observed that the multiplier for computation of loss of dependency has to be applied as per the age of the Claimants or the deceased whichever is higher. Paras 4,5,7 and 8 of the report are extracted hereunder:-

4. As far as the selection of multiplier is concerned, the law is settled that the choice of multiplier is determined by the age of the deceased or that of the claimants whichever is higher. There is a three Judges Bench judgment of the Supreme Court in U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, , where the Supreme Court relied on General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas

and others, and reiterated that the choice of the multiplier is determined by the age of the deceased or that of the claimants whichever is more. Para 12 of the report is extracted hereunder:-

12. For concluding the analysis it is necessary now to refer to the judgment of this Court in the case of General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, . In that case this Court culled out the basic principles governing the assessment of compensation emerging from the legal authorities cited above and reiterated that the multiplier method is the sound method of assessing compensation. The Court observed:

The multiplier method involves the ascertainment of the loss of dependency or the multiplicand having regard to the circumstances of the case and capitalizing the multiplicand by an appropriate multiplier. The choice of the multiplier is determined by the age of the deceased (or that of the claimants, whichever is higher) and by the calculation as to what capital sum, if invested at a rate of interest appropriate to a stable economy, would yield the multiplicand by way of annual interest. In ascertaining this, regard should also be had to the fact that ultimately the capital sum should also be consumed-up over the period for which the dependency is expected to last. The principle was explained and illustrated by a mathematical example:

The multiplier represents the number of Years" purchase on which the loss of dependency is capitalised. Take for instance a case where annual loss of dependency is Rs. 10,000. If a sum of Rs.1,00,000 is invested at 10% annual interest, the interest will take care of the dependency, perpetually. The multiplier in this case works out to 10. If the rate of interest is 5% per annum and not 10% then the multiplier needed to capitalise the loss of the annual dependency at Rs.10,000 would be 20. Then the multiplier i.e., the number of Years" purchase of 20 will yield the annual dependency perpetually. Then allowance to scale down the multiplier would have to be made taking into account the uncertainties of the future, the allowances for immediate lump sum payment, the period over which the dependency is to last being shorter and the capital feed also to be spent away over the period of dependency is to last etc. Usually in English Courts the operative multiplier rarely exceeds 16 as maximum. This will come down accordingly as the age of the deceased person (or that of the dependents, whichever is higher) goes up. 5. There is another three Judges" decision of the Supreme Court in New India Assurance Company Ltd. Vs. Smt. Shanti Pathak and Others, , where in the case of the death of a bachelor, who was aged only 25 years, the multiplier of 5 was applied according to the age of the mother of the deceased, who was about 65 years at the time of the accident. Para 6 of the report is extracted hereunder:-

6. Considering the income that was taken, the foundation for working out the compensation cannot be faulted. The monthly contribution was fixed at Rs.3,500/-. In the normal course we would have remitted the matter to the High

Court for consideration on the materials placed before it. But considering the fact that the matter is pending since long, it would be appropriate to take the multiplier of 5 considering the fact that the mother of the deceased is about 65 years at the time of the accident and age of the father is more than 65 years. Taking into account the monthly contribution at Rs.3,500/- as held by the Tribunal and the High Court, the entitlement of the claim would be Rs.2,10,000/-. The same shall bear interest @ 7.5% p.a. from the date of the application for compensation. Payment already made shall be adjusted from the amount due.

x x x

7. In the latest judgment of the Supreme Court in National Insurance Company Ltd. Vs. Shyam Singh and Others, , the Supreme Court referred to Ramesh Singh and Another Vs. Satbir Singh and Another, and held that the multiplier as per the age of the deceased or the claimant whichever is higher would be applicable. Para 9 and 10 of the report are apposite:-

9. This Court in the case of Ramesh Singh and Another Vs. Satbir Singh and Another, , after referring to the earlier judgments of this Court, in detail, dealt with the law with regard to determination of the multiplier in a similar situation as in the present case. The said findings of this Court are as under:-

6. We have given anxious consideration to these contentions and are of the opinion that the same are devoid of any merits. Considering the law laid down in New India Assurance Co. Ltd. Vs. Charlie and Another, , it is clear that the choice of multiplier is determined by the age of the deceased or claimants whichever is higher. Admittedly, the age of the father was 55 years. The question of mother's age never cropped up because that was not the contention raised even before the Trial Court or before us. Taking the age to be 55 years, in our opinion, the courts below have not committed any illegality in applying the multiplier of 8 since the father was running 56th year of his life. 10. In our view, the dictum laid down in Ramesh Singh (supra) is applicable to the present case on all fours. Accordingly, we hold that the Tribunal had rightfully applied the multiplier of 8 by taking the average of the parents of the deceased who were 55 and 56 years.

8. Similarly in Manam Saraswathi Sampoorana Kalavathi and Others Vs. The Manager APSRTC, Tadepalligudem A.P. and Another, , the multiplier of 13 was applied in case of death of a young bachelor where the mother was 47 years of age.

13. Although, the sisters were minor but in due course, the sisters were to get married. Hence, the appropriate multiplier in the instant case will be as per the age of the mother of the deceased. The year of birth of the mother as per Aadhar card is 1965. Thus, on the date of the accident, the age of the mother of the deceased was 47 years. The appropriate multiplier therefore, will be 13.

14. The loss of dependency therefore, comes to Rs.6,95,685/- (6656/-x 12 x 2/3 x 13).

15. In addition, the Claimants were entitled to a sum of Rs.1,00,000/- towards loss of love and affection, Rs.25,000/- towards funeral expenses and Rs.10,000/- towards loss to estate as granted by the Claims Tribunal. The compensation thus, comes to Rs.8,30,685/-.

16. It may be noted that the deceased survived for six days after the accident. As per the testimony of Munesh Kumar, the deceased's father, after the accident, the deceased was taken to District Hospital, Meerut. Thereafter, he was shifted to Rockland Hospital and then to Batra Hospital. He underwent surgery in Batra hospital but he could not be saved.

17. Photocopies of certain bills have been placed on record. It appears that Munesh Kumar was an employee of IIT and he obtained reimbursement in respect of the expenditure on the treatment that is why the same was not claimed by the Respondents. Hence, on the basis of the photocopies of the bills, the same was not permissible. At the same time, I shall award a lump sum compensation of Rs.20,000/- towards conveyance expenses for removing the deceased to the hospital in Meerut and thereafter, to various hospitals and for attendant charges.

18. The overall compensation hence, comes to Rs.8,50,685/- (Rs.6,92,224/- Rs.1,35,000/- + Rs.20,000/-).

19. The compensation is thus, reduced from Rs.12,13,300/- to Rs.8,50,685/- which shall carry interest @ 9% per annum as awarded by the Claims Tribunal.

20. The excess amount deposited along with proportionate interest in terms of the order dated 23.07.2014 shall be refunded to the Appellant Insurance Company.

21. The compensation awarded by this Court shall be disbursed in terms of the order passed by the Claims Tribunal.

22. The appeal is disposed of in above terms.

23. Pending application also stands disposed of.

24. Statutory amount, if any, shall also be refunded to the Appellant Insurance Company.