
(2015) 03 DEL CK 0306

In the Delhi High Court

Case No : Mac. App. 717/2013 and 108/2014

Surinder Singh

APPELLANT

Vs

Dilshad Khan and Others

RESPONDENT

Date of Decision : 17-03-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 12 Rule 8
Motor Vehicles Act, 1988 — Section 112, 163-A, 166, 168, 2(c)
Penal Code, 1860 (IPC) — Section 279, 304-A

Citation : (2015) 03 DEL CK 0306

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

Bench : Single Bench

Advocate : Sailesh Gupta, Advocates for the Respondent

Final Decision : Disposed off

Judgement

G.P. Mittal, J.

CM APPL. 2153/2014 (delay) in MAC APP. 108/2014

1. Reply to the application has not been filed.
2. For the reasons stated in the application, delay of 246 days in filing the appeal is condoned.
3. Application stands disposed of.

MAC. APP. 717/2013

MAC. APP. 108/2014

4. These two appeals arise out of a common judgment dated 14.02.2013 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby a compensation of Rs. 4,97,649/- was awarded in favour of the father of Ram Siromani Singh, who suffered fatal injuries in a motor vehicular accident which occurred on 10.09.2010.

5. MAC APP. 717/2013 is preferred by Sh. Surinder Singh, father of the deceased Ram Siromani Singh for enhancement of the compensation, awarded, whereas MAC APP. 108/2014 has been preferred by Shri Mahesh Yadav, owner of Swaraj Mazda bearing registration no. DL-1PB-5379, which was involved in the accident.

6. For the sake of convenience, the Appellant in MAC APP. 717/2013 shall be referred to as the Claimant. Appellant in MAC APP. 108/2014 shall be referred to as the Insured and the ICICI Lombard General Insurance Company Limited, who is the insurer of the vehicle, shall be referred to as the Insurer.

7. The following contentions are raised on behalf of the Claimant:-

(i) The Claims Tribunal erred in considering the income of the deceased;

(ii) Multiplier as per the age of the Claimant was wrongly applied; and

(iii) The compensation awarded towards non-pecuniary damages is on the lower side.

8. On the other hand, the learned counsel for the Insured submits that the driver did possess a valid and effective driving licence to drive the vehicle involved in the accident on the date of the accident. The Insurance Company did not serve any notice upon the insured to produce the driving licence or to prove the circumstances in which he (the owner) handed over the vehicle to the driver, thus, the Insurance Company failed to prove the conscious and willful breach of the terms and conditions of the insurance policy. The Claims Tribunal erred in granting recovery rights against the Insured merely on the testimony of R3W4, Anuj Kumar, LDC from the Licensing Authority, Mainpuri.

9. It is urged on behalf of the Insurance Company that the compensation awarded is just and reasonable. It is stated that the Insurance Company proved the breach of the terms and conditions of the Insurance policy and the Claims Tribunal, therefore, rightly granted recovery rights to the Insurance Company.

10. First, the compensation.

MULTIPLICAND

11. During inquiry before the Claims Tribunal it was claimed that the deceased was a student of B.A. (Ist year) from Chhatrapati Shahuji Maharaj University, Kanpur. In the meanwhile, he had also obtained six months diploma in Computer Accounting from J.E. Data Expert and one year diploma and certificate from the ARD Computer Institute in Grade-A. The Claims Tribunal took the minimum wages of a skilled workman as the starting point to compute the loss of the dependency, added 30% towards inflation on account of judgment in Rakhi v. Satish Kumar and Ors., MAC APP. 390/2011, decided on 16.07.2012 and applied a multiplier of 9, as per the age of the Claimant.

12. I have the Trial Court record before me.

13. Deceased Ram Siromani Singh had passed High School Examination in the

year 2004. He passed Intermediate Examination in the year 2006. He obtained six months diploma in Computer Accounting and the modules covered FOC, DOS, Windows, MS-Word, MS-Excel, MS-Power Point, Manual Accounting Concept, Accounting Package Tally and Internet Operations. The deceased had also obtained a 12 months diploma and certificate from the ARD Computer Institute in Grade-A.

14. It is well settled that in a Claim under Section 166 of the Motor Vehicles Act, 1988 (the Act), the Claims Tribunal/the Court must always take into consideration the potential income of a student, particularly when he is pursuing a professional course.

15. In the case of Haji Zainullah Khan (Dead) by Lrs. Vs. Nagar Mahapalika, Allahabad, , death of a young boy aged 20 years took place in an accident which happened in the year 1972. The deceased was a student of B.Sc. 1st year (Biology), a compensation of Rs. 1,46,900/- was increased and rounded off to Rs. 1,50,000/-.

16. A reference may also be made to a judgment of this Court in Ganga Devi and Ors. v. New India Assurance Co. Ltd. and Ors., MAC APP. 359/2008, decided on 23.11.2009, which is related to the death of a student (studying medicine) who was doing internship and was to be awarded the MBBS degree in a short time, the Tribunal awarded a compensation of Rs. 9,35,352/- on the basis of the minimum wages of a Graduate. However, this Court observed that although the deceased was getting a stipend of Rs. 5,000/- per month at the time of his death due to the accident, he would have ultimately joined as a doctor at a salary ranging between Rs. 16,000/- per month to Rs. 25,000/- per month. Thus, the average monthly income of the deceased was taken as Rs. 18,000/- and after adding 50% towards future prospects, the compensation was enhanced to Rs. 21,36,000/- by this Court.

17. In Ramesh Chand Joshi v. New India Assurance Company MAC APP. 212-213/2006, decided on 20.01.2010 this Court took the potential income of a BE (Bio-Technology) 1st year student of Delhi College of Engineering(DCE) as Rs. 38,333/- per month.

18. A Division Bench of Andhra Pradesh High Court in B. Ramulamma and Others Vs. Venkatesh, Bus Union and Another, , held that it was very difficult to determine the income of a student who was about to complete his course. It was observed that it is appropriate and reasonable to take the salary at the entry level fixed by the Govt. for such jobs.

19. Of course, in the instant case deceased Ram Siromani Singh was still in the process of doing graduation, but at the same time, he had obtained one six months diploma in Computer Accounting and one 12 months diploma/certificate in BPA from ARD Computer Institute.

20. In my opinion, the Claims Tribunal erred in adopting the minimum wages of a

skilled worker to compute the loss of dependency. In my view, an attempt ought to have been made to assess the potential income of a Graduate with at least two diplomas in computer as stated earlier.

21. Considering the two professional diplomas and the fact that the deceased had passed intermediate and was still pursuing studies for obtaining a degree in Arts, his income ought to have been assessed at least Rs. 10,000/- per month.

FUTURE PROSPECTS

22. As far as addition towards future prospects is concerned, the question was dealt with at great detail by this Court in *HDFC Ergo General Insurance Co. Ltd. v. Smt. Lalita Devi and Ors.*, MAC APP No. 189/2014 decided on 12.01.2015. It was held that in the absence of any evidence with regard to better future prospects, addition towards future prospects is not permissible. Paras 8 to 21 of the report in *Lalita 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 reappear 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 (SB. 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."

23. Thus, no addition towards future prospects was permissible.

MULTIPLIER

24. The question of selection of multiplier was dealt with at great length by me in Vijay Laxmi and Another Vs. Binod Kumar Yadav and Others, . In that case, the learned counsel for the Appellant had relied on the following judgments (i) Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, ; (ii) Mohd. Ameeruddin and Another Vs. United India Insurance Co. Ltd. and Another, ; (iii) P.S. Somanathan and Others Vs. District Insurance Officer and Another, ; (iv) Bilkish Vs. United India Insurance Co. Ltd. and Another, ; (v) National Insurance Co. Ltd. v. Azad Singh and Ors., 2010 ACJ 2384 (SC); (vi) Oriental Insurance Co. Ltd. Vs. Deo Patodi and Others, , and (vii) Divisional Manager, New India Assurance Co. Ltd. v. T. Chelladurai and Ors., 2010 ACJ 382 (SC).

25. I had discussed the law laid down in the earlier stated judgments and had further referred to the judgments in General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, ; U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, ; Fakeerappa and Another Vs. Karnataka Cement Pipe Factory and Others, and New India Assurance Company Ltd. Vs. Smt. Shanti Pathak and Others, to hold that the multiplier has to be selected as per the age of the deceased or the Claimant whichever is higher.

26. Learned counsel for Respondent No. 1 has submitted that in view of the three Judge Bench decision in Reshma Kumari and Ors. and a later judgment of the Supreme Court in M. Mansoor and Anr., the judgment in Vijay Laxmi (supra) of this Court needs to be revisited and the multiplier has to be as per the age of the deceased and age of the Claimant is not at all relevant for selection of the multiplier.

27. Section 168 of the Motor Vehicles Act, 1988 (the Act) enjoins a Claims Tribunal to determine the amount of compensation which is just and reasonable. It can neither be a source of profit nor should be a pittance. In other words, it

should not be meager nor should be a windfall. In this connection, a reference may be made to the report of the Supreme Court in *State of Haryana and Another Vs. Jasbir Kaur and Others*, , which dealt with the grant of compensation in case of injury which principles equally apply in case of award of compensation in fatal accident cases. In para 7, the Supreme Court held as under:

"7. It has to be kept in view that the Tribunal constituted under the Act as provided in Section 168 is required to make an award determining the amount of compensation which is to be in the real sense "damages" which in turn appears to it to be "just and reasonable". It has to be borne in mind that compensation for loss of limbs or life can hardly be weighed in golden scales. But at the same time it has to be borne in mind that the compensation is not expected to be a windfall for the victim. Statutory provisions clearly indicate that the compensation must be "just and it cannot be a bonanza; not a source of profit; but the same should not be a pittance. The courts and tribunals have a duty to weigh the various factors and quantify the amount of compensation, which should be just. What would be "just" compensation is a vexed question. There can be no golden rule applicable to all cases for measuring the value of human life or a limb. Measure of damages cannot be arrived at by precise mathematical calculations. It would depend upon the particular facts and circumstances, and attending peculiar or special features, if any. Every method or mode adopted for assessing compensation has to be considered in the background of "just" compensation which is the pivotal consideration. Though by use of the expression "which appears to it to be just" a wide discretion is vested in the Tribunal, the determination has to be rational, to be done by a judicious approach and not the outcome of whims, wild guesses and arbitrariness. The expression "just" denotes equitability, fairness and reasonableness, and non-arbitrary. If it is not so it cannot be just."

28. Initially, the trend of the Courts was to ascertain the life expectancy, deduct the age of the deceased and to award the compensation on the basis of the residual life span. The Courts started deducting certain sums out of the sum as arrived above on account of lump sum payment.

29. However, in *General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others*, , an attempt was made for the first time to award just and reasonable compensation on the basis of the multiplier method. The Supreme Court referred to the report in *Gobald Motor Service Ltd. and Another Vs. R.M.K. Veluswami and Others*, and observed that actual pecuniary loss can be ascertained only by balancing, on one hand, the loss to the Claimant of the future pecuniary benefits and on the other hand, any pecuniary advantage which from whatever sources comes to them by reason of death. Paras 8 and 9 of the report in *Susamma Thomas (Mrs.)* (supra) are extracted hereunder:-

"8. The measure of damage is the pecuniary loss suffered and is likely to be

suffered by each dependant. Thus "except where there is express statutory direction to the contrary, the damages to be awarded to a dependant of a deceased person under the Fatal Accidents Acts must take into account any pecuniary benefit accruing to that dependant in consequence of the death of the deceased. It is the net loss on balance which constitutes the measure of damages." (Per Lord Macmillan in *Davies v. Powell* [(1942) AC 601, 617: (1942) 1 All ER 657 (HL)].) Lord Wright in the same case said, "The actual pecuniary loss of each individual entitled to sue can only be ascertained by balancing on the one hand the loss to him of the future pecuniary benefit, and on the other any pecuniary advantage which from whatever source comes to him by reason of the death". These words of Lord Wright were adopted as the principle applicable also under the Indian Act in *Gobald Motor Service Ltd. and Another Vs. R.M.K. Veluswami and Others*, where the Supreme Court stated that the general principle is that the actual pecuniary loss can be ascertained only by balancing on the one hand the loss to the claimants of the future pecuniary benefit and on the other any pecuniary advantage which from whatever source comes to them by reason of the death, that is, the balance of loss and gain to a dependant by the death, must be ascertained.

9. The assessment of damages to compensate the dependants is beset with difficulties because from the nature of things, it has to take into account many imponderables, e.g., the life expectancy of the deceased and the dependants, the amount that the deceased would have earned during the remainder of his life, the amount that he would have contributed to the dependants during that period, the chances that the deceased may not have lived or the dependants may not live up to the estimated remaining period of their life expectancy, the chances that the deceased might have got better employment or income or might have lost his employment or income altogether."

30. The Supreme Court referred to *Davies v. Powell*, (1942) AC 601 and *Nance v. British Columbia Electric Railway Company Limited*, (1951) AC 601 and in paras 13 and 14 of the report in *Susamma Thomas (Mrs.)*, the Supreme Court observed as under:-

"13. 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.

14. The considerations generally relevant in the selection of multiplicand and multiplier were adverted to by Lord Diplock in his speech in *Mallett case* [*Mallett v. McMonagle*, (1970) AC 166 : (1969) 2 All ER 178 (HL)] where the deceased

was aged 25 and left behind his widow of about the same age and three minor children. On the question of selection of multiplicand Lord Diplock observed:

"The starting point in any estimate of the amount of the "dependency" is the annual value of the material benefits provided for the dependants out of the earnings of the deceased at the date of his death. But ... there are many factors which might have led to variations up or down in the future. His earnings might have increased and with them the amount provided by him for his dependants. They might have diminished with a recession in trade or he might have had spells of unemployment. As his children grew up and became independent the proportion of his earnings spent on his dependants would have been likely to fall. But in considering the effect to be given in the award of damages to possible variations in the dependency there are two factors to be borne in mind. The first is that the more remote in the future is the anticipated change the less confidence there can be in the chances of its occurring and the smaller the allowance to be made for it in the assessment. The second is that as a matter of the arithmetic of the calculation of present value, the later the change takes place the less will be its effect upon the total award of damages. Thus at interest rates of 4 1/2 per cent the present value of an annuity for 20 years of which the first ten years are at ? 100 per annum and the second ten years at ? 200 per annum, is about 12 years" purchase of the arithmetical average annuity of ? 150 per annum, whereas if the first ten years are at ? 200 per annum and the second ten years at ? 100 per annum the present value is about 14 years" purchase of the arithmetical mean of ? 150 per annum. If therefore the chances of variations in the "dependency" are to be reflected in the multiplicand of which the years" purchase is the multiplier, variations in the dependency which are not expected to take place until after ten years should have only a relatively small effect in increasing or diminishing the "dependency" used for the purpose of assessing the damages."

31. The purpose of adopting the multiplier as per the age of the deceased or as per the age of the Claimant whichever is higher was that if the Claimant is of much higher age, particularly in case of death of a bachelor where the mother or for that matter the parents may be double the age of the deceased, the dependency is to come to an end in a much lesser period as against the dependency of a widow or minor children of a deceased. In any case, the deceased was not to support more than his own life span and thus, by providing the dependency to the Claimants, it was held that the dependency has to be as per the age of the deceased or the Claimant whichever is higher.

32. The law laid down in *Susamma Thomas (Mrs.)* (supra) with regard to adoption of multiplier method and selection of multiplier according to the age of the deceased or the Claimant whichever is higher was affirmed by a three Judge Bench decision in *U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others*, . The three Judge Bench laid down that the multiplier cannot in all cases be solely dependant on the age of the deceased and the age

of the parents would also be relevant in case of death of a bachelor in the choice of multiplier. In para 18 of the report of the Supreme Court in Trilok Chandara (supra), it was observed as under:-

"18..... Besides, the selection of multiplier cannot in all cases be solely dependant on the age of the deceased. For example, if the deceased, a bachelor, dies at the age of 45 and his dependants are his parents, age of the parents would also be relevant in the choice of the multiplier....."

33. There was some confusion as to the selection of the multiplier because of the multiplier table as given in the Second Schedule of the Act under Section 163-A which was inserted w.e.f. 14.11.1994. Some of the cases had adopted the multiplier as given in the Second Schedule. Although, the three Judge Bench in Trilok Chandra (supra) had noticed some clerical mistakes in the multiplier table as given in the Second Schedule, it stated that the said table can be taken as a guide. Noticing the wide variations in the selection of multiplier, a two Judge Bench of the Supreme Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, noted the multiplier as adopted in New India Assurance Co. Ltd. Vs. Charlie and Another, and in the Second Schedule and in para 40 of the report it compared the same in a tabulated form which is extracted hereunder:-

34. The Supreme Court with a view to having a uniform multiplier held that the multiplier as given in Column (4) of the above table should be usually followed. In paras 41 and 42 of the report in Sarla Verma (Smt.), the Supreme Court observed:-

"41. Tribunals/courts adopt and apply different operative multipliers. Some follow the multiplier with reference to General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, [set out in Column (2) of the table above]; some follow the multiplier with reference to U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, , [set out in Column (3) of the table above]; some follow the multiplier with reference to New India Assurance Co. Ltd. Vs. Charlie and Another, [set out in Column (4) of the table above]; many follow the multiplier given in the second column of the table in the Second Schedule of the MV Act [extracted in Column (5) of the table above]; and some follow the multiplier actually adopted in the Second Schedule while calculating the quantum of compensation [set out in Column (6) of the table above]. For example if the deceased is aged 38 years, the multiplier would be 12 as per General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, , 14 as per U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, , 15 as per New India Assurance Co. Ltd. Vs. Charlie and Another, , or 16 as per the multiplier given in Column (2) of the Second Schedule to the MV Act or 15 as per the multiplier actually adopted in the Second Schedule to the MV Act. Some tribunals, as in this case, apply the multiplier of 22 by taking the balance years of service with reference to the retiring age. It is necessary to

avoid this kind of inconsistency. We are concerned with cases falling under Section 166 and not under Section 163-A of the MV Act. In cases falling under Section 166 of the MV Act, Davies method [Davies v. Powell Duffryn Associated Collieries Ltd., 1942 AC 601 : (1942) 1 All ER 657 (HL)] is applicable.

42. We therefore hold that the multiplier to be used should be as mentioned in Column (4) of the table above (prepared by applying General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, , U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, and New India Assurance Co. Ltd. Vs. Charlie and Another, , which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years."

35. It may be noted that the Supreme Court had gone into the history of adoption of multiplier method and referred to Nance v. British Columbia Electric Railway Company Limited, (1951) AC 601 and Davies v. Powell, [(1942) AC 601.

36. Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, related to the death of a Scientist who died leaving behind his widow, three minor children, parents and grandfather. Thus, the Supreme Court while laying down that the multiplier has to be adopted as per Column 4 of the table as per the age of the deceased, was generally referring to the award of compensation in cases of death of a person who had a family consisting of widow, children and parents. Of course, general principles with regard to award of compensation in case of death of a bachelor were also laid down by the Supreme Court in Sarla Verma (Smt.), but it was not specifically laid down that even in the case of death of a bachelor, the age of the Claimants who may be aged parents will be totally irrelevant.

37. However, in Amrit Bhanu Shali and Others Vs. National Insurance Co. Ltd. and Others, , the Supreme Court stated that the selection of the multiplier has to be as per the age of the deceased and not on the basis of the age of the dependants. It was a case which related to the death of a bachelor.

38. On account of divergence of opinion in the earlier cases, a reference to a larger Bench was made by a two Judge Bench in Reshma Kumari and Others Vs. Madan Mohan and Another, . The question of award of compensation in relation to multiplier and future prospects was gone into at great length by a three Judge Bench of the Supreme Court in Reshma Kumari and Others Vs. Madan Mohan and Another, . The two referred questions by Reshma Kumari and Others Vs. Madan Mohan and Another, were:-

"1.1. Whether the multiplier specified in the Second Schedule appended to the Motor Vehicles Act, 1988 (for short "the 1988 Act") should be scrupulously

applied in all cases" and

1.2. Whether for determination of the multiplicand, the 1988 Act provides for any criterion, particularly as regards determination of future prospects?"

39. While answering the points, in Para 43, the Supreme Court observed as under:-

"43. In what we have discussed above, we sum up our conclusions as follows:

43.1. In the applications for compensation made under Section 166 of the 1988 Act in death cases where the age of the deceased is 15 years and above.

43.2. In cases where the age of the deceased is up to 15 years.

43.3. As a result of the above, while considering the claim applications made under Section 166 in death cases where the age of the deceased is above 15 years, there is no necessity for the Claims Tribunals to seek guidance or for placing reliance on the Second Schedule in the 1988 Act.

43.4. The Claims Tribunals shall follow the steps and guidelines stated in para 19 of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, for determination of compensation in cases of death....."

40. In Reshma Kumari and Others Vs. Madan Mohan and Another, , these were general observations that the steps and guidelines stated in para 19 of Sarla Verma (Smt.) have to be followed. In Sarla Verma (Smt.) it was laid down that having regard to the age of the deceased and period of active career, the active multiplier should be selected and the multiplier should be chosen from the table with reference to the age of the deceased. As I have observed above, it was not the intention in Sarla Verma (Smt.) to apply the multiplier of 18 in case of death of a bachelor aged 25 years where the dependants may only be the aged parents. Thus, in Reshma Kumari also, it was not laid down that the multiplier has to be according to the age of the deceased even when the deceased is a bachelor having dependency of the parents only.

41. Of course, in M. Mansoor and Another Vs. United India Insurance Co. Ltd. Another, , the two Judge Bench observed that the multiplier has to be as per the age of the deceased and even in case of death of a bachelor aged 24 years, the multiplier will be 18.

42. However, there is a three Judge Bench decision of the Supreme Court in New India Assurance Company Ltd. Vs. Smt. Shanti Pathak and Others, wherein a bachelor aged 25 years lost his life in a motor vehicular accident which occurred on 11.11.2002. The Claims Tribunal adopted a multiplier of 17, as per the age of the deceased (25 years). On appeal filed by the New India Assurance Company Limited before the High Court, it was contented that the multiplier has to be as per the age of the Claimants (in that case) and not as per the age of the deceased. The Division Bench of High Court of Uttarakhand declined to accept the contention and dismissed the appeal. In the SLP filed by the Insurance

Company, the multiplier of 17 was reduced to "5" on the age of the mother of the deceased being 65 years.

43. Also, in the latest judgment of the Supreme Court in Ashvinbhai Jayantilal Modi Vs. Ramkaran Ramchandra Sharma, , a two Judge Bench of the Supreme Court dealt with the questions of multiplier and the appropriate multiplier in case of death of a bachelor in the said case was taken as 13, keeping in mind the age of the parents of the deceased. Para 11 of the report is extracted hereunder:-

"11. The deceased was a diligent and outstanding student of medicine who could have pursued his MD after his graduation and reached greater heights. Today, medical practice is one of the most sought after and rewarding professions. With the tremendous increase in demand for medical professionals, their salaries are also on the rise. Therefore, we have no doubt in ascertaining the future income of the deceased at Rs. 25,000 p.m. i.e. Rs. 3,00,000 p.a. Further, deducting 1/3rd of the annual income towards personal expenses as per Oriental Insurance Co. Ltd. Vs. Deo Patodi and Others, and applying the appropriate multiplier of 13, keeping in mind the age of the parents of the deceased, as per the guidelines laid down in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , we arrive at a total loss of dependency at Rs. 26,00,000 [(Rs. 3,00,000 minus 1/3 x Rs. 3,00,000) x 13]....."

44. Thus, right from the two Judge Bench decision in General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, , which for the first time held that the multiplier method is the best way of awarding just compensation, which was approved in U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, , wherein it was held that the multiplier has to be as per the age of the deceased or the Claimant whichever is higher, which is reiterated in New India Assurance Company Ltd. Vs. Smt. Shanti Pathak and Others, by applying the multiplier as per the age of the mother of the deceased (bachelor), the consensus of the larger Bench decisions seems to be that the multiplier has to be selected as per the age of the deceased or the Claimant whichever is higher. The judgment in Vijay Laxmi and Another Vs. Binod Kumar Yadav and Others, has thus correctly interpreted the law. Three Judge Bench decision in U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, shall be taken as a binding precedent in the matter of selection of multiplier as per the age of the deceased or the Claimant.

45. Thus, the multiplier has to be adopted as per the age of the deceased or the Claimant whichever is higher. In the instant case, the mother of the deceased was aged 52 years at the time of the accident. However, she died during the pendency of the Claim Petition. Age of the Claimant, i.e. father of the deceased was also about 57 years on the date of the accident. Thus, the appropriate multiplier will be "9".

46. The loss of dependency therefore, will come to Rs. 5,40,000/- (10,000/- x 12

x 1/2 x 9).

47. Initially, the trend was to award only a notional sum towards non-pecuniary damages. However, in view of the three Judge Bench decision in *Rajesh and Others Vs. Rajbir Singh and Others*, , the courts are awarding compensation 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. Following *Rajesh and Ors.* (supra), I tend to award these non-pecuniary damages to the Claimant.

48. The compensation thus, is enhanced from Rs. 4,97,649/- to Rs. 6,75,000/- which shall carry interest @ 7.5% per annum from the date of filing of the Claim Petition till its payment.

49. 50% of the enhanced compensation shall be held in fixed deposit for a period of one year. Rest shall be released on deposit.

LIABILITY

50. While dealing with the issue of liability, the Claims Tribunal held that from the testimony of R3W4 it was established that the driving licence held by the driver was not valid on 15.11.2009 and, therefore, while making the Insurance Company liable to pay the compensation granted recovery rights to it against the owner.

51. The learned counsel for the insured has referred to the notice Ex. R3W3/1 purported to be served upon the insured. It is stated that the notice was sent at wrong address and, therefore, the insured had no opportunity to produce the driving licence or to explain the circumstances under which the vehicle was entrusted to the driver.

52. I have perused the Claim Petition, the cover note and also the notice under Order XII Rule 8 of the Civil Procedure Code, 1908(CPC) (Ex. R3W3/1). The address of the insured in the Claim Petition as also in the cover note is mentioned as House no. 373, Godaka Patti Mohalla, Kapashera Village, New Delhi. However, the notice Ex. R3W3/1 was sent to the insured at House no. 370, Godaka Patti Mohalla, Kapashera Village, New Delhi. Thus, since the notice was not correctly addressed, no presumption of service of notice can be drawn against the insured.

53. It may be noted that Dilshad Khan, driver of the offending vehicle was prosecuted for an offence punishable under Section 279/304-A of the Indian Penal Code, 1860(the Act) only for the accident in question. He was not prosecuted for an offence under Section 3 read with Section 112 of the Act for driving the vehicle without a driving licence. In fact, the driving licence of the driver was already on record. A certified copy of which has been filed on the paper book (page 33) by the insured. Referring to the copy of the driving licence, the learned counsel for the insured urges that the driver possessed a driving licence for a medium motor vehicle from 16.11.2006 to 15.11.2009. An endorsement for HGV (it must be for heavy goods vehicle) was obtained on

26.01.2008 and that after the endorsement the licence was valid upto 25.01.2011, which covered the period of accident. Unfortunately, although the endorsement of HGV and the validity of the driving licence upto 25.01.2011 was apparent on the copy of the driving licence, but no such specific question was put to R3W4, LDC from Licensing Authority, Mainpuri. It seems that Anuj Kumar, R3W4 made a statement only on the basis of the record. Perhaps, he was not aware of the endorsement made on the driving licence for HGV since 26.01.2008. In any case, that will not be very relevant in view of the fact that the driver and the owner appeared in pursuance of notice before the Claims Tribunal. Only a general and vague plea was initially taken by the Insurance Company in the Written Statement dated 02.05.2011, that if the driver was not holding a valid driving licence, the insurance company will not be liable to pay the compensation. Subsequently, the Written Statement was amended and a specific plea was taken that the licence was not renewed for the period after 15.11.2009 to 24.05.2011, yet no fresh notice was issued to the insured. The notice under Order XII Rule 8 CPC, as stated earlier was not posted at the correct address. Thus, firstly, it cannot be said that the driving licence (Annexure A-2) was not a valid driving licence on the date of the accident and, secondly, since the insured was not served with any notice to produce the driving licence of the driver on the date of the accident, it cannot be said that there was a conscious and willful breach of the terms and conditions of the insurance policy on the part of the insured. The Insurance Company, therefore, cannot avoid its liability.

54. The impugned order, so far as it grants recovery rights against the insured (owner) cannot be sustained; the same is accordingly set aside.

55. The enhanced compensation of Rs. 1,77,351/- along with interest shall be deposited by the Insurance Company within six weeks, failing which the Claimant shall be entitled to recover interest @ 12% per annum from the date of this judgment.

56. Appellant Mahesh Yadav in MAC APP. 108/2014 shall be entitled to refund to the amount, if any, deposited with the Sub-Divisional Magistrate in pursuance of the order dated 13.12.2013 passed by the Execution Court/Claims Tribunal.

57. Statutory amount shall also be refunded to the Appellant Mahesh Yadav in MAC APP. 108/2014.

58. Both the appeals are disposed of in above terms.

59. Pending applications, if any, also stand disposed of.