(2015) 05 DEL CK 0015

In the Delhi High Court

Case No : MAC App. 446 of 2013

United India Insurance Company Ltd.	APPELLANT
Vs	
Rakesh and Others	RESPONDENT

Date of Decision : 25-05-2015

Acts Referred:

Citation : (2015) 5 AD 370

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

Bench : Single Bench

Advocate : S.K. Ray, for the Appellant

Final Decision : Dismissed

Judgement

G.P. Mittal, J.—The appeal is for reduction of compensation of Rs. 6,11,040/- awarded by the Motor Accident Claims Tribunal (the Claims Tribunal) in favour of Respondents No. 1 to 3 for the death of Santosh, a bachelor who suffered fatal injuries in a motor vehicular accident which occurred on 23.10.2002.

2. It is urged by the learned counsel for the Appellant that Respondents No. 2 and 3 were married sisters of the deceased. Therefore, they were not dependant on Santosh. At the most, deceased Santosh can be said to have shared the responsibility of his younger brother, Respondent No. 1, who was aged only 16 years at the time of the accident. It is therefore, stated that the Claims Tribunal erred in making a deduction of 1/3 towards personal and living expenses which ought to have been 1/2.

3. I have the Trial Court record before me and have gone through the evidence produced by Respondents No. 1, 2 and 3.

4. PW-2 Rakesh, younger brother of the deceased and PW-5 Panna Devi categorically deposed that deceased Santosh was working as a mason (Raj Mistri) in Delhi. PW-2 deposed that deceased Santosh used to earn Rs. 4,500/- per month and he would spend Rs. 1,000/- monthly on himself and rest of the

money used to be transmitted to them for their maintenance. Panna Devi (PW-5) also stated that the deceased used to spend Rs. 1,000/- to 1,500/- on himself and the rest of the money used to be spent for their maintenance. On appreciation of evidence, the Claims Tribunal found that the deceased was a skilled worker. Therefore, it took minimum wages of a skilled worker, added 30% towards inflation, deducted 1/3rd towards personal and living expenses and applied the multiplier of 18 to compute the loss of dependency.

5. The learned counsel for the Appellant urges that addition towards inflation was not permissible. Reliance is placed on Reshma Kumari and Others Vs. Madan Mohan and Another, (2009) 10 JT 90 : (2009) 10 SCALE 90 : (2009) 13 SCC 422 : (2009) 12 SCR 305 and the judgment of this Court in HDFC Ergo General Insurance Co. Ltd. v. Smt. Lalta Devi and Ors., MAC APP No. 189/2014, decided on 12.01.2015. It is further urged that deduction towards personal and living expenses to the extent of 1/3 was wrongly done by the Claims Tribunal as it is well settled that in the case of death of an unmarried bachelor person, the deduction should be 50%. It is also urged that the two claimants who were married sisters of the deceased cannot be said to be financially dependent upon him.

6. I tend to agree with the learned counsel for the Appellant that married sisters cannot be said to be financially dependent on their unmarried brother unless there is specific evidence as to the circumstances which make them financially dependent on their unmarried brother. Thus, the deduction towards personal and living expenses will be 50%.

7. The question of grant of future prospects was dealt with by this Court at great length in HDFC Ergo General Insurance Co. Ltd. v. Smt. Lalta Devi and Ors., MAC APP No. 189/2014 decided on 12.01.2015. Paras 8 to 21 of the report in Lalta Devi (supra) are extracted hereunder:

"8. It is no gainsaying that in appropriate cases some addition towards future prospects must be made in case of death or injury of a person pursuing a professional course. At the same time, it cannot be laid down as a uniform principle that every person pursuing professional course will have a bright future. There may be a student pursuing engineering from the reputed engineering colleges like Indian Institute of Technology (IIT), Regional Engineering College or any other reputed college. At the same time, a number of engineering Colleges have mushroomed where an engineering graduate may find it difficult to secure a job of an engineer. In the instant case, deceased Aditya, as stated earlier was a student of an unknown engineering college, i.e. Echelon Institute of Technology, Faridabad which is claimed to be affiliated to Maharshi Dayanand University, Rohtak. The Claimants have placed on record result-cum-detailed marks card of First and Second Semester. It may be noted that the deceased had secured just ordinary marks in seven subjects and he had to reappear in papers 1002 (Mathematical-I), 1006 (Foundation of Computer and Programming) and 1008 (Basics of Mechanical Engineering). Similarly, in the Second Semester the deceased was absent in one of the 12 papers and out of 11 subjects for which he had taken examination, he was to re-appear in four subjects. Thus, it will be difficult to say that the deceased was a brilliant student or that he was pursuing engineering from a well known or even mediocre college.

9. The learned counsel for the Claimants has referred to a three Judge Bench decision of the Supreme Court in Rajesh and Others Vs. Rajbir Singh and Others, (2013) 2 ACC 841 : (2013) ACJ 1403 : (2013) 3 CTC 883 : (2013) 8 JT 288 : (2014) 173 PLR 779 : (2013) 3 RCR(Civil) 170 : (2013) 6 SCALE 563 : (2013) 9 SCC 54 : (2014) 1 SCC(L&S) 149 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, (2009) ACJ 1298 : AIR 2009 SC 3104 : (2009) CLT 1055 : (2009) 6 JT 495 : (2009) 6 SCALE 129 : (2009) 6 SCC 121 : (2009) 5 SCR 1098 : (2009) 5 UJ 2280 : (2009) AIRSCW 4992 : (2009) 3 Supreme 487 was extended in Rajesh and Others Vs. Rajbir Singh and Others, (2013) 2 ACC 841 : (2013) ACJ 1403 : (2013) 3 CTC 883 : (2013) 8 JT 288 : (2014) 173 PLR 779 : (2013) 3 RCR(Civil) 170 : (2013) 6 SCALE 563 : (2013) 9 SCC 54 : (2014) 1 SCC(L&S) 149 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, (2013) 2 ACC 907 : (2013) ACJ 1253 : (2013) 4 AD 516 : (2013) 2 CTC 680 : (2013) 4 JT 362 : (2013) 2 PLR 750 : (2013) 2 RCR(Civil) 660 : (2013) 5 SCALE 160 : (2013) 9 SCC 65 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, (1994) ACJ 1 : AIR 1994 SC 1631 : (1994) 107 PLR 1 : (1993) 4 SCALE 643 : (1994) 2 SCC 176 ; Smt. Sarla Dixit and another Vs. Balwant Yadav and others, (1996) ACJ 581 : (1996) 3 AD 13 : AIR 1996 SC 1274 : (1996) 3 JT 252 : (1993) 2 LLJ 664 : (1996) 113 PLR 656 : (1996) 2 SCALE 802 : (1996) 3 SCC 179 : (1996) 3 SCR 30 : (1996) 2 UJ 110 and Abati Bezbaruah Vs. Dy. Director General Geological Survey of India and Another, (2003) 1 ACC 352 : (2003) ACJ 680 : AIR 2003 SC 1817 : (2003) 1 CTC 570 : (2003) 5 JT 205 : (2003) 2 SCALE 120 : (2003) 3 SCC 148 : (2003) 1 SCR 1229 : (2003) 1 UJ 486 : (2003) AIRSCW 1266 : (2003) 2 Supreme 178 , 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, (2009) ACJ 1298 : AIR 2009 SC 3104 : (2009) CLT 1055 : (2009) 6 JT 495 : (2009) 6 SCALE 129 : (2009) 6 SCC 121 : (2009) 5 SCR 1098 : (2009) 5 UJ 2280 : (2009) AIRSCW 4992 : (2009) 3 Supreme 487 , this Court has noted the earlier decisions in General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, (1994) ACJ 1 : AIR 1994 SC 1631 : (1994) 107 PLR 1 : (1993) 4 SCALE 643 : (1994) 2 SCC 176 , Smt. Sarla Dixit and another Vs. Balwant Yadav and others, (1996) ACJ 581 : (1996) 3 AD 13 : AIR 1996 SC 1274 : (1996) 3 JT 252 : (1993) 2 LLJ 664 : (1996) 113 PLR 656 : (1996) 2 SCALE 802 : (1996) 3 SCC 179 : (1996) 3 SCR 30 : (1996) 2 UJ 110 and Abati Bezbaruah Vs. Dy. Director General Geological Survey of India and Another, (2003) 1 ACC 352 : (2003) ACJ 680 : AIR 2003 SC 1817 : (2003) 1 CTC 570 : (2003) 5 JT 205 : (2003) 2 SCALE 120 : (2003) 3 SCC 148 : (2003) 1 SCR 1229 : (2003) 1 UJ 486 : (2003) AIRSCW 1266 : (2003) 2 Supreme 178 and in para 24 of the Report held as under: Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, (2009) ACJ 1298 : AIR 2009 SC 3104 : (2009) CLT 1055 : (2009) 6 JT 495 : (2009) 6 SCALE 129 : (2009) 6 SCC 121 : (2009) 5 SCR 1098 : (2009) 5 UJ 2280 : (2009) AIRSCW 4992 : (2009) 3 Supreme 487 :

"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, AIR 2005 SC 752 : (2005) 99 CLT 514 : (2005) 1 JT 97 : (2004) 10 SCALE 501 : (2005) 2 SCC 673 : (2005) SCC(L&S) 246 ; Safiya Bee Vs. Mohd. Vajahath Hussain alias Fasi, AIR 2011 SC 421 : (2011) 2 SCC 94 : (2011) AIRSCW 3880 ; and Union of India (UOI) and Others Vs. S.K. Kapoor, (2011) 129 FLR 360 : (2011) 3 JT 446 : (2011) 2 LLJ 627 : (2011) 3 SCALE 586 : (2011) 4 SCC 589 : (2011) 1 SCC(L&S) 725 : (2011) 3 SCR 906 : (2011) 4 UJ 2198 : (2011) AIRSCW 1814 : (2011) 2 Supreme 606 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, (2013) 2 ACC 907 : (2013) ACJ 1253 : (2013) 4 AD 516 : (2013) 2 CTC 680 : (2013) 4 JT 362 : (2013) 2 PLR 750 : (2013) 2 RCR(Civil) 660 : (2013) 5 SCALE 160 : (2013) 9 SCC 65 ; the three Judge Bench was dealing with a reference made by a two Judge Bench (S.B. Sinha and Cyriac Joseph, JJ.). 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, (2009) ACJ 1298 : AIR 2009 SC 3104 : (2009) CLT 1055 : (2009) 6 JT 495 : (2009) 6 SCALE 129 : (2009) 6 SCC 121 : (2009) 5 SCR 1098 : (2009) 5 UJ 2280 : (2009) AIRSCW 4992 : (2009) 3 Supreme 487 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, (2012) ACJ 1428 : AIR 2012 SC 2185 : (2012) 4 SCALE 559 : (2012) 6 SCC 421 : (2012) AIRSCW 2892 : (2012) 3 Supreme 197 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, (2014) 1 ACC 473 : (2014) ACJ 692 : AIR 2014 SC 995 : (2014) AIRSCW 856 : (2014) 2 JT 384 : (2014) 1 RCR(Civil) 914 : (2014) 1 SCALE 682 : (2014) 3 SCC 210 . In paras 14 and 15, the Supreme Court observed as under:-

"14. Certain parallel developments will now have to be taken note of. In Reshma

Kumari and Others Vs. Madan Mohan and Another, (2009) 10 JT 90 : (2009) 10 SCALE 90 : (2009) 13 SCC 422 : (2009) 12 SCR 305 , 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, (2013) 2 ACC 907 : (2013) ACJ 1253 : (2013) 4 AD 516 : (2013) 2 CTC 680 : (2013) 4 JT 362 : (2013) 2 PLR 750 : (2013) 2 RCR(Civil) 660 : (2013) 5 SCALE 160 : (2013) 9 SCC 65 reiterated the view taken in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, (2009) ACJ 1298 : AIR 2009 SC 3104 : (2009) CLT 1055 : (2009) 6 JT 495 : (2009) 6 SCALE 129 : (2009) 6 SCC 121 : (2009) 5 SCR 1098 : (2009) 5 UJ 2280 : (2009) AIRSCW 4992 : (2009) 3 Supreme 487 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, (2011) ACJ 15 : (2010) 12 JT 106 : (2010) 11 SCALE 571 : (2011) 1 TAC 4 : (2010) 10 UJ 5374 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, (2013) 2 ACC 907 : (2013) ACJ 1253 : (2013) 4 AD 516 : (2013) 2 CTC 680 : (2013) 4 JT 362 : (2013) 2 PLR 750 : (2013) 2 RCR(Civil) 660 : (2013) 5 SCALE 160 : (2013) 9 SCC 65 and Rajesh and Others Vs. Rajbir Singh and Others, (2013) 2 ACC 841 : (2013) ACJ 1403 : (2013) 3 CTC 883 : (2013) 8 JT 288 : (2014) 173 PLR 779 : (2013) 3 RCR(Civil) 170 : (2013) 6 SCALE 563 : (2013) 9 SCC 54 : (2014) 1 SCC(L&S) 149 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, AIR 2005 SC 752 : (2005) 99 CLT 514 : (2005) 1 JT 97 : (2004) 10 SCALE 501 : (2005) 2 SCC 673 : (2005) SCC(L&S) 246 in para 12 , the Supreme Court observed as under:-

"12. Having carefully considered the submissions made by the learned Senior Counsel for the parties and having examined the law laid down by the Constitution Benches in the abovesaid decisions, we would like to sum up the legal position in the following terms:

(1) The law laid down by this Court in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or coequal strength.

(2) [Ed.: Para 12(2) corrected vide Official Corrigendum No. F.3/Ed.B.J./21/2005 dated 3-3-2005.] A Bench of lesser quorum cannot disagree or dissent from the view of the law taken by a Bench of larger quorum. In case of doubt all that the Bench of lesser quorum can do is to invite the attention of the Chief Justice and request for the matter being placed for hearing before a Bench of larger quorum than the Bench whose decision has come up for consideration. It will be open only for a Bench of coequal strength to express an opinion doubting the correctness of the view taken by the earlier Bench of coequal strength, whereupon the matter may be placed for hearing before a Bench consisting of a quorum larger than the one which pronounced the decision laying down the law the correctness of which is doubted.

(3) [Ed.: Para 12(3) corrected vide Official Corrigendum No. F.3/Ed.B.J./7/2005 dated 17-1-2005.] The above rules are subject to two exceptions: (i) the abovesaid rules do not bind the discretion of the Chief Justice in whom vests the power of framing the roster and who can direct any particular matter to be placed for hearing before any particular Bench of any strength; and (ii) in spite of the rules laid down hereinabove, if the matter has already come up for hearing before a Bench of larger quorum and that Bench itself feels that the view of the law taken by a Bench of lesser quorum, which view is in doubt, needs correction or reconsideration then by way of exception (and not as a rule) and for reasons given by it, it may proceed to hear the case and examine the correctness of the previous decision in question dispensing with the need of a specific reference or the order of the Chief Justice constituting the Bench and such listing. Such was the situation in Union of India (UOI) and Another Vs. Raghubir Singh (Dead) by Lrs. Etc., AIR 1989 SC 1933 : (1989) 66 CompCas 466 : (1989) 178 ITR 548 : (1989) 2 JT 427 : (1989) 1 SCALE 1337 : (1989) 2 SCC 754 : (1989) 3 SCR

316 : (1989) 74 STC 313 and Union of India (UOI) and Another Vs. Hansoli Devi and Others, AIR 2002 SC 3240 : (2003) 95 CLT 140 : (2002) 7 JT 42 : (2002) 6 SCALE 356 : (2002) 7 SCC 273 : (2002) 2 SCR 324 Supp : (2002) 2 UJ 1345 ."

19. Similarly, in Safiya Bee Vs. Mohd. Vajahath Hussain alias Fasi, AIR 2011 SC 421 : (2011) 2 SCC 94 : (2011) AIRSCW 3880 in para 27 , the Supreme Court observed as under:-

"27. However, even assuming that the decision in WP No. 35561 of 1998 did not operate as res judicata, we are constrained to observe that even if the learned Judges who decided WP No. 304 of 2001 did not agree with the view taken by a coordinate Bench of equal strength in the earlier WP No. 35561 of 1998 regarding the interpretation of Section 2(c) of the Act and its application to the petition schedule property, judicial discipline and practice required them to refer the issue to a larger Bench. The learned Judges were not right in overruling the statement of the law by a coordinate Bench of equal strength. It is an accepted rule or principle that the statement of the law by a Bench is considered binding on a Bench of the same or lesser number of Judges. In case of doubt or disagreement about the decision of the earlier Bench, the well-accepted and desirable practice is that the later Bench would refer the case to a larger Bench."

20. In Union of India (UOI) and Others Vs. S.K. Kapoor, (2011) 129 FLR 360 : (2011) 3 JT 446 : (2011) 2 LLJ 627 : (2011) 3 SCALE 586 : (2011) 4 SCC 589 : (2011) 1 SCC(L&S) 725 : (2011) 3 SCR 906 : (2011) 4 UJ 2198 : (2011) AIRSCW 1814 : (2011) 2 Supreme 606 while holding that the decision of the Coordinate 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, (2011) 3 SCALE 587 : (2011) 4 SCC 591 : (2011) 1 SCC(L&S) 727 was prior to the decision in Union of India (UOI) and Another Vs. T.V. Patel, (2007) 114 FLR 1 : (2007) 6 SCALE 9 : (2007) 4 SCC 785 : (2007) 2 SCC(L&S) 98 : (2007) 6 SCR 373 : (2008) 1 SLJ 54 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, (2011) 3 SCALE 587 : (2011) 4 SCC 591 : (2011) 1 SCC(L&S) 727 was not noticed in Union of India (UOI) and Another Vs. T.V. Patel, (2007) 114 FLR 1 : (2007) 6 SCALE 9 : (2007) 4 SCC 785 : (2007) 2 SCC(L&S) 98 : (2007) 6 SCR 373 : (2008) 1 SLJ 54 , the latter decision is a judgment per incuriam. The decision in S.N. Narula Vs. Union of India (UOI) and Others, (2011) 3 SCALE 587 : (2011) 4 SCC 591 : (2011) 1 SCC(L&S) 727 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."

8. Admittedly, there was no evidence with regard to future prospects. Therefore, addition of 30% towards inflation or future prospects was not permissible.

9. At the same time, it may be noted that it was established on record that the deceased was working as a mason. Masons are highly skilled persons and the claim of income of Rs. 4,500/- per month cannot be said to be exaggerated. Even if it is assumed that the deceased was earning Rs. 175/- per day in the year 2002 when the accident took place, on 25 working days his income would come to about to Rs. 4,400/- per month. Thus, I shall accept the income of deceased Santosh to be Rs. 4,400/- per month. On making a deduction of 1/2 towards personal and living expenses and applying the multiplier of 18, the loss of dependency will come to Rs. 4,75,200/- (Rs. 4,400/- x 12 x 1/2 x 18).

10. In addition, in view of the judgment in Rajesh and Others Vs. Rajbir Singh and Others, (2013) 2 ACC 841 : (2013) ACJ 1403 : (2013) 3 CTC 883 : (2013) 8 JT 288 : (2014) 173 PLR 779 : (2013) 3 RCR(Civil) 170 : (2013) 6 SCALE 563 : (2013) 9 SCC 54 : (2014) 1 SCC(L&S) 149 , I further award 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.

11. The overall compensation thus, comes to Rs. 6,10,200/- whereas the compensation awarded by the Claims Tribunal is Rs. 6,11,040/-.

12. The compensation awarded therefore, cannot be said to be excessive or exorbitant.

13. The appeal therefore, has to fail; the same is accordingly dismissed.

14. Pending applications also stand disposed of.

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