

Prakasho Devi and Ors. Vs. Sanjay Kumar and Ors.

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Court : Delhi

Decided On : Mar-17-2015

Judge : G.P. Mittal

Appellant : Prakasho Devi and Ors.

Respondent : Sanjay Kumar and Ors.

Advocate for Pet/Ap. : Mr. Garud M.V, Ms. Shantha Devi Raman, Mr. Navneet Goyal, Mr. Pawan K. Bahl

Judgement :

\$-4 & 5 * IN THE HIGH COURT OF DELHI AT NEW DELHI Decided on:

17. h March, 2015 + MAC.APP. 124/2005 NATIONAL INSURANCE CO. LTD. & ANR. + Appellants Through: Mr. Garud M.V., Advocate for Ms. Shantha Devi Raman, Advocate versus PRAKASHO DEVI & ORS. Respondents Through: Mr. Navneet Goyal, Advocate for Respondents No.1 to 5. Mr. Pawan K. Bahl, Advocate for Respondent No.7. MAC.APP. 426/2005 PRAKASHO DEVI & ORS. Through: Appellants Mr. Navneet Goyal, Advocate versus SANJAY KUMAR & ORS. Respondents Through: Mr. Pawan K. Bahl, Advocate for Respondent No.2. Mr. Garud M.V., Advocate for Ms. Shantha Devi Raman, Advocate for Respondent No.3. CORAM: HON'BLE MR. JUSTICE G.P.MITTAL

JUDGMENT

G. P. MITTAL, J.

(ORAL) CM. APPL. 17901/2014 in MAC. APP. 124/2005 1. The Appellants pray for dispensing with the service of Respondent No.6 as Respondent No.6 was earlier served through publication. It is stated that Respondent No.6 did not even contest the proceedings before the Claims Tribunal. The fact is not disputed by the Respondents. In view of this, Respondent no.6 is deemed to be served.

2. The application stands disposed of. MAC. APP. 124/2005 AND MAC. APP. 426/2005 3. These two appeals (MAC. APP. 124/2005 and MAC. APP. 426/2005) arise out of judgment dated 03.11.2004 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby compensation of 2,70,000/- along with interest @ 9% per annum was awarded in favour of Prakasho Devi and Onkar Singh Rana for the death of Sanjiv Kumar, who suffered fatal injuries in a motor vehicular accident which occurred on 08.02.2000.

4. For the sake of convenience, the Appellant in MAC. APP. 124/2005 shall be referred to as the Insurance Company, whereas the Appellants in MAC. APP. 425/2005 shall be referred to as the claimants.

5. The finding on negligence has not been challenged by the Insurance Company.

6. During inquiry before the Claims Tribunal, it was claimed that deceased Sanjiv Kumar had joined Parmar Construction Company, Inder Puri, New Delhi as a helper. He was later promoted as an operator. He was getting a salary of 4,200/- per month at the time of his death. The Claims Tribunal declined to believe that the deceased was getting a salary of 4,200/- per month and proceeded to award compensation on the basis of minimum wages of a matriculate i.e. 3,000/- per month. The Claims Tribunal made a deduction of 1/3 towards personal and living expenses and applied the multiplier of 10 to compute the loss of dependency. The Claims Tribunal also negated the plea raised on behalf of the Insurance Company that there was breach of terms and conditions of the insurance policy and therefore, the Insurance Company was liable to pay the compensation.

7. Following contentions are raised on behalf of the Insurance Company: (i) Deduction towards personal and living expenses ought to have been 1/2 instead of 1/3 taken by the Claims Tribunal. Reliance is placed on Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr., (2009) 6 SCC121 and (ii) The Insurance Company established that the driving licence held by the driver was valid to drive only LMV non-transport which was valid for the period 18.08.1999 to 17.08.2019. This did not entitle the driver to drive Tata 407, a transport vehicle which was involved in the present accident. Thus, the Insurance Company was entitled to avoid indemnification of the insured and therefore, at least recovery rights ought to have been granted to the Insurance Company.

8. Per contra, the learned counsel for the claimants states that the compensation awarded is on the lower side. The income of the deceased was sufficiently proved to be 4,200/- per month, addition of 50% ought to have been made towards future prospects and the multiplier ought to have been as per the age of the deceased. Reliance is placed on Reshma Kumari & Ors. v. Madan Mohan & Anr., (2013) 9 SCC65 9. On the other hand, the learned counsel for Respondent No.7 in MAC. APP. 426/2005 (owner of the vehicle) supports the impugned award with regard to liability. It is contended that the Insurance Company failed to discharge the initial onus that there was willful and conscious breach of terms and conditions of the insurance policy by the owner. The Insurance Company was therefore, not entitled to avoid liability and was under obligation to satisfy the award on behalf of the insured. MULTIPLICAND AND COMPENSATION:

10. In order to prove the income of the deceased, the claimants examined Om Prakash Gupta, Supervisor of Parmar Construction Company as PW-3. He testified that deceased Sanjiv Kumar had initially joined the earlier said company as a helper. He was, however, promoted as an operator to operate Tata Hitachi No.200. He proved the salary certificate Ex. PW3/A. The salary certificate Ex. PW3/A is extracted hereunder:

TO WHOMSOEVER IT MAY IT MAY CONCERN This is to certify that Sh. Sanjeev Kumar S/o Sh. Onkar Singh Rana R/o Village: Nangrah, P.O. Palan, Distt. Ropar(Punjab), has worked with this organization as helper to the operator of

Hitachi Excavator (Vacco) between period 01.12.1998 to 31.12.1999. During this period he was paid a salary of Rs.1500/-(Rupees one thousand five hundred only) per month plus Perks. Thereafter, he worked as operator on the above machine at a salary of Rs.4,200/-(Rupees four thousand two hundred only) per month plus Perks. He ceased to be our employee on being killed in a road accident on 8th February 2000. During his employment he was found to be a hardworking and honest worker.

11. PW-3 was cross-examined at length on behalf of the Insurance Company. He admitted that in the salary certificate Ex. PW3/A, the salary was mentioned as 1,500/- per month, whereas in the salary register brought by him, the salary for the months of November and December, 1999 is mentioned as 1,800/- per month. He stated that 300/- was paid to the deceased towards conveyance. It may be noted that the accident in question took place on 08.02.2000. It is the plea of the claimants which is sought to be proved through PW-3 that the deceased was promoted as an operator in January, 2000 on account of his extraordinary work. No documentary evidence except the salary certificate Ex. PW3/A was placed on record or proved by the claimants to establish that the deceased was earning a salary of 4,200/- per month at the time of his death. In my view, the Claims Tribunal rightly discarded the salary certificate in the absence of any corroborative documentary evidence with regard to the same, particularly when the deceased was admittedly working on a salary of 1,500/- per month since the year 1998 and took the minimum wages of a matriculate to calculate the loss of dependancy. In the absence of any documentary evidence, it is not believable that the salary of the deceased would have been doubled suddenly and that too in the month prior to his accident. There is no evidence that the deceased was ever paid a salary of 4,200/- per month even for the month of January, 2000. Further, since I have already discarded the evidence that the deceased had been promoted as an operator, he was working only as a helper and in the absence of any evidence with regard to good future prospects, no addition is permissible. A reference may be made to the judgment passed by 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, wherein it was held that the three Judge Bench decision in Reshma Kumari & Ors. v. Madan Mohan & Anr., (2013) 9 SCC65 on the aspect of future prospects shall be

taken as a binding precedent.

12. Also, it is well settled that in case of a bachelor, deduction towards personal and living expenses shall be 50%. (Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr., (2009) 6 SCC121.

13. The question of selection of multiplier was dealt with at great length by me in Shriram General Insurance Co. Ltd. v. Maneesha Karnatak and Ors., MAC APP655of 2014 decided on 20.03.2015 wherein Paras 10 to 34, it was held as under:

10. Coming to the question of multiplier to be selected, the question of selection of multiplier was dealt with at great length by me in Vijay Laxmi & Anr. v. Binod Kumar Yadav & Ors., ILR (2012) 6 Del 447. In that case, the learned counsel for the Appellant had relied on the following judgments (i) Smt. Sarla Verma & Ors. v. Delhi Transport Corporation & Anr., 2009 (6) SCC121 (ii) Mohd. Ameeruddin v. United India Insurance Co. Ltd., 2010 (12) SCALE155 (iii) P.S. Somanathan v. District Insurance Officer, I (2011) ACC659(SC); (iv) Bilkish v. United India Insurance Co. Ltd. & Anr., 2008 (4) SCALE25 (v) National Insurance Co. Ltd. v. Azad Singh & Ors., 2010 ACJ2384(SC); (vi) Oriental Insurance Co. Ltd. v. Deo Patodi & Ors., 2009 ACJ2359(SC) and (vii) Divisional Manager, New India Assurance Co. Ltd. v. T. Chelladurai & Ors., 2010 ACJ382(SC).

11. 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 v. Susamma Thomas (Mrs.) and Ors., (1994) 2 SCC176 U.P. SRTC v. Trilok Chandara, (1996) 4 SCC362 Fakeerappa v. Karanataka Cement Pipe Factory, (2004) 2 SCC473and New India Assurance Company Limited v. Shanti Pathak (Smt.) & Ors., (2007) 10 SCC1to hold that the multiplier has to be selected as per the age of the deceased or the Claimant whichever is higher.

12. The learned counsel for Respondents No.1 and 2 has submitted that in view of the three Judge Bench decision in Reshma Kumari v. Madan Mohan & Anr., (2009) 13 SCC422and a later judgment of the Supreme Court in M. Mansoor &

Anr. v. United India Insurance Company Limited & Anr., (2013) 15 SCC603 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.

13. 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 v. Jasbir Kaur, (2003) 7 SCC484 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.

14. 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.

15. However, in *General Manager, Kerala State Road Transport Corporation, Trivandrum v. Susamma Thomas (Mrs.) and Ors.*, (1994) 2 SCC176 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. & Anr. v. R.M.K. Veluswami & Ors.*, AIR 1962 SC1 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) AC601 617 : (1942) 1 All ER657(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. v. R.M.K. Veluswami* [AIR 1962 SC1: (1962) 1 SCR929:

1962. MLJ (Cri) 120]. 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.

16. The Supreme Court referred to *Davies v. Powell*, (1942) AC601 and *Nance v. British Columbia Electric Railway Company Limited*, (1951) AC601 and in Paras 13 and 14 of the report in *Susamma Thomas (Mrs.)* (supra), 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) AC166: (1969) 2 All ER178(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 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.

17. 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.

18. 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. SRTC v. Trilok Chandra*, (1996) 4 SCC362. 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 Chandra (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

19. 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 *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC121 noted the multiplier as adopted in *Susamma Thomas*, *Trilok Chandra* and *New India Assurance Company Limited v. Charlie & Anr.* (2005) 10 SCC720 and in the Second Schedule and in Para 40 of the report, it compared the same in a tabulated form which is extracted hereunder: Age of the deceased Multiplier scale as envisaged in *Susamma Thomas* [(1994) 2 SCC176:

1994. SCC (Cri) 335]. (1) Up to 15 yrs 15 to 20 yrs 21 to 25 yrs 26 to 30 yrs 31 to 35 yrs 36 to 40 yrs 41 to 45 yrs 46 to 50 yrs 51 to 55 yrs 56 to 60 yrs 61 to 65 yrs Above 65 yrs (2) 16 15 14 13 12 11 10 9 8 6 5 Multiplier scale as adopted by Trilok Chandra [(1996) 4 SCC362 (3) 18 17 16 15 14 13 12 11 10 08 05 Multiplier scale in Trilok Chandra⁴as clarified in Charlie [(2005) 10 SCC720:

2005. SCC (Cri) 1657]. (4) 18 18 17 16 15 14 13 11 09 07 05 Multiplier specified in Second Column in the Table in Second Schedule to the MV Act (5) 15 16 17 18 17 16 15 13 11 8 5 5 Multiplier actually used in Second Schedule to the MV Act (as seen from the quantum of compensation) (6) 20 19 18 17 16 15 14 12 10 8 6 5 20. 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 Susamma Thomas [(1994) 2 SCC176:

1994. SCC (Cri) 335]. [set out in Column (2) of the table above].; some follow the multiplier with reference to Trilok Chandra [(1996) 4 SCC362 , [set out in Column (3) of the table above].; some follow the multiplier with reference to Charlie [(2005) 10 SCC720:

2005. SCC (Cri) 1657]. [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 Susamma Thomas [(1994) 2 SCC176:

1994. SCC (Cri) 335]., 14 as per Trilok Chandra [(1996) 4 SCC362, 15 as per Charlie [(2005) 10 SCC720:

2005. SCC (Cri) 1657]., 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 AC601: (1942) 1 All ER657(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 Susamma Thomas [(1994) 2 SCC176:

1994. SCC (Cri) 335]., Trilok Chandra [(1996) 4 SCC362 and Charlie [(2005) 10 SCC720:

2005. SCC (Cri) 1657].), 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.

21. 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) AC601 and Davies v. Powell, (1942) AC601 22. Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr., (2009) 6 SCC121 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.

23. However, in *Amrit Bhanu Shali v. National Insurance Company Limited*, (2012) 11 SCC738 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.

24. 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 v. Madan Mohan & Anr.*, (2009) 13 SCC422. 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 & Ors. v. Madan Mohan & Anr.*, (2013) 9 SCC65. The two referred questions by *Reshma Kumari v. Madan Mohan & Anr.*, (2009) 13 SCC422 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?.

25. 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 *Sarla Verma v. DTC*, (2009) 6 SCC121 for determination of compensation in cases of death..

26. In *Reshma Kumari & Ors. v. Madan Mohan & Anr.*, (2013) 9 SCC65 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.

27. Of course, in *M. Mansoor & Anr. v. United India Insurance Company Limited & Anr.*, (2013) 15 SCC603 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.

28. However, there is a three Judge Bench decision of the Supreme Court in *New India Assurance Company Limited v. Shanti Pathak (Smt.) & Ors.*, (2007) 10 SCC1 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.

29. Also, in the latest judgment of the Supreme Court in *Ashvinbhai Jayantilal Modi v. Ramkaran Ramchandra Sharma & Anr.*, (2015)2 SCC180 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. v. Deo Patodi* [(2009) 13 SCC123: (2009) 5 SCC (Civ) 29 : (2010) 1 SCC (Cri) 963]. 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 *Sarla Verma case* [*Sarla Verma v. DTC*, (2009) 6 SCC121: (2009) 2 SCC (Civ) 770 : (2009) 2 SCC (Cri) 1002]., we arrive at a total loss of dependency at Rs 26,00,000 [(Rs 3,00,000 minus 1/3 Rs 3,00,000) 13]..

30. Thus, right from the two Judge Bench decision in *General Manager, Kerala State Road Transport Corporation, Trivandrum v. Susamma Thomas (Mrs.) and Ors.*, (1994) 2 SCC176 which for the first time held that the multiplier method is the best way of awarding just compensation, which was approved in *U.P. SRTC v. Trilok Chandara*, (1996) 4 SCC362 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 Limited v. Shanti Pathak (Smt.) & Ors.*, (2007) 10 SCC1by 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 & Anr. v. Binod Kumar Yadav & Ors.*, ILR (2012) 6 DEL447has thus, correctly interpreted the law. Three Judge Bench decision in *U.P. SRTC v. Trilok Chandara*, (1996) 4 SCC362shall be taken as a binding precedent in the matter of selection of multiplier as per the age of the deceased or the Claimants.

31. Moreover, even if there is divergence of opinion in subsequent two Judge Bench decisions or three Judge Bench decisions (although there is no divergence

by three Judge Bench decisions), the law laid down by three Judge Bench in *Trilok Chandra* (supra) shall be taken as a binding precedent. In this connection, a reference may be made to *Central Board of Dawoodi Bohra Community and Anr. v. State of Maharashtra & Anr.*, (2005) 2 SCC673 wherein, 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) 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) 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 *Raghubir Singh* [(1989) 2 SCC754 and *Hansoli Devi* [(2002) 7 SCC273.

32. Similarly, in *Safiya Bee v. Mohd. Vajahath Hussain @ Fasi*, (2011) 2 SCC94 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.

33. Also, in *Union of India and Ors. v. S.K. Kapoor*, (2011) 4 SCC589 while holding that the decision of the Coordinate Bench is binding on the subsequent Bench of equal strength, it was held that the Bench of Co-ordinate strength can only make a reference to a larger Bench. In para 9 of the

9. It may be noted that the decision in *S.N. Narula* case [(2011) 4 SCC591 was prior to the decision in *T.V. Patel* case [(2007) 4 SCC785: (2007) 2 SCC (L&S) 98].. 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* case [(2011) 4 SCC591 was not noticed in *T.V. Patel* case [(2007) 4 SCC785: (2007) 2 SCC (L&S) 98]. , the latter decision is a judgment *per incuriam*. The decision in *S.N. Narula* case [(2011) 4 SCC591 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.

34. Thus, in view of this, the three Judge Bench decision in *Trilok Chandra* (*supra*), later reiterated in the three Judge Bench decision of *New India Assurance*

Co. Ltd. v. Shanti Pathak (supra) shall be taken as a binding precedent. The multiplier will be as per the age of the deceased or the Claimant whichever is higher.

14. Therefore, in case of death of a bachelor, the appropriate multiplier will be as per the age of the dependants, in this case the mother. In the instant case, there is no documentary record to show the age of Smt. Prakasho Devi. In her statement recorded on 19.05.2000, she stated her age to be 45 years. Thus, it is assumed that on the date of the accident, claimant Prakasho Devi would have been aged between 44-45 years. Consequently, the appropriate multiplier will be 14 as against 10 as adopted by the Claims Tribunal.

15. The loss of dependency thus, comes to 2,52,000/- ($3000/- \times 12 \times \frac{1}{2} \times 14$). In addition, the claimants are entitled to a sum of 1,00,000/- towards loss of love and affection, 25,000/- towards funeral expenses and 10,000/- towards loss to estate. (See *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54). 16. The overall compensation therefore, comes to 3,87,000/-.

17. The compensation is hence, enhanced by 1,17,000/- which shall carry interest @ 9% per annum from the date of filing of the claim petition till its payment.

LIABILITY:

18. The plea of the Insurance Company is that since driver Sanjay Kumar possessed a licence bearing No.P-04081999147426/ LMV (NT), he shall be deemed to be driving Tata 407, the vehicle involved in the accident without a valid and effective driving licence. The learned counsel for the Insurance Company relies on the testimony of R3W1 Rakesh Kumar Kadayala who proved the copy of the insurance policy as Ex. R3W1/A. He further proved report Ex. R3W1/B of the investigator. The report reveals that licence No.P-04081999147426 was valid only for motor cycle and LMV (NT).

19. At this stage, it will be appropriate to refer to the respective pleadings of the parties. Harvinder Singh, owner of the insured vehicle involved in the accident in his written statement denied that the accident was caused on account of rash and negligent driving on the part of the driver. He took the plea that the vehicle was

insured with National Insurance Company and the policy was valid for the period 08.01.2000 to 07.01.2001 vide policy No.354501/1999/6704637/New. Harvinder Singh further took the plea that in any case, he is not liable to pay the compensation as the vehicle involved was duly insured with the earlier said Insurance Company.

20. A perusal of the written statement filed by the Insurance Company reveals that only a vague and general plea was taken with regard to its liability. It would be appropriate to extract the defence of the Insurance Company taken in column 2 of para 23 of the written statement to show as to what kind of defence was taken. The same is extracted hereunder:

That if at any stage it is proved that the vehicle in question (sic) involved in the alleged accident, even then no liability can be fastened on the answering respondent unless and until it is proved that the alleged driver of the offending vehicle was holding a valid and effective driving licence and was not disqualified to hold or obtain the same and further that the alleged accident was caused due to the fault or negligence on the part of the driver and/or owner of the offending vehicle and further the said vehicle was not sold/transferred by the insured/owner before the date of alleged accident.

21. It may be noted that the written statement was filed by the Insurance Company without even verifying whether the said vehicle was involved in the accident, whether the driver possessed a valid driving licence and whether the licence was valid and effective to drive the vehicle involved in the accident. It is very strange that on the basis of this vague plea, the Insurance Company seeks exoneration or in the alternative, recovery rights. The Insurance Company never preferred to amend the written statement to take any specific plea, yet it was permitted to lead evidence to prove that there was willful breach of the terms and conditions of the insurance policy by the insured. As stated earlier, the Insurance Company examined R3W1, Rakesh Kumar Kadayala, Asstt. Administrative Officer of the Insurance Company. It may be noted that no notice was issued to Harvinder Singh, insured and owner of the offending vehicle to produce the original insurance policy or to produce the driving licence of the driver. The copy of the

insurance policy placed on record although exhibited as Ex.R3W1/A is inadmissible in evidence in the absence of any notice requiring the insured to produce the said insurance policy. No notice was issued to the insured to produce the driving licence of the driver. Had it been so, the owner might have come forward with some explanation as to the circumstances under which the vehicle was entrusted to the driver as well. The insured could have either produced the driving licence of the driver. Nothing of this sort was done by the Insurance Company. It is well settled that the initial onus is on the Insurance Company to prove that there was willful and conscious breach on the part of the insured.

22. In the absence of any notice, the Insurance Company has failed to discharge the initial onus of proving that there was willful and conscious breach of the terms and conditions of the insurance policy. The Insurance Company therefore, cannot escape its liability.

23. The accident relates to the year 2000. The compensation awarded shall be released to the claimants in terms of the orders passed by the Claims Tribunal.

24. 50% of the enhanced compensation along with proportionate interest shall be held in Fixed Deposit for a period of one year; rest shall be released on deposit.

25. The compensation shall be equally shared between Respondents No.1 and 2 in MAC. APP. 124/2005 who are the parents of the deceased.

26. The enhanced compensation of 1,17,000/- along with interest shall be deposited by the Insurance Company with the Claims Tribunal within six weeks.

27. Pending applications stand disposed of.

28. Statutory amount, if any, deposited shall be refunded to the Appellant Insurance Company. (G.P. MITTAL) JUDGE MARCH17 2015 pst

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