

Oriental Insurance Co. Ltd. Vs Kaila Devi and Others

Court: Delhi High Court

Date of Decision: March 18, 2015

Acts Referred: Motor Vehicles Act, 1988 - Section 163-A, 166, 168

Citation: (2015) 3 AD 648

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

Bench: Single Bench

Advocate: L.K. Tyagi, for the Appellant; V.K. Vashistha, Advocates for the Respondent

Final Decision: Allowed

Judgement

G.P. Mittal, J.

Appellant Oriental Insurance Company Limited impugns the judgment dated 11.02.2014 passed by the Motor Accidents

Claims Tribunal (the Claims Tribunal) whereby compensation of Rs. 7,06,608/- was awarded for the death of Chhotey @ Chhotey Lal, a

bachelor who suffered fatal injuries in a motor vehicular accident which took place on 21.11.2006 within the jurisdiction of Police Station

Sahibabad, Ghaziabad.

2. During inquiry before the Claims Tribunal, it was claimed that the deceased was working as an auto rickshaw (TSR) driver and was earning Rs.

7,500/- per month. It was further claimed that the deceased used to give a sum of Rs. 6,000/- per month to his mother, Respondent No. 1 out of

his earnings. It was stated that the accident was caused on account of rash and negligent driving of bus bearing registration No. DL-1PA-4549 by

its driver.

3. On appreciation of evidence, the Claims Tribunal found that the accident did take place on account of rash and negligent driving of the driver of

earlier stated bus. The Claims Tribunal declined to believe that the deceased was working as a driver and thus, refused to accept the income of Rs.

7,500/- per month as claimed by Respondent No. 1. At the same time, the Claims Tribunal proceeded to award compensation taking minimum

wages of a skilled worker (Rs. 3736/- per month) to compute the loss of dependency.

4. The Claims Tribunal while relying on the judgments in Amrit Bhanu Shali and Others Vs. National Insurance Co. Ltd. and Others, and M.

Mansoor and Another Vs. United India Insurance Co. Ltd. Another, , adopted the multiplier of 17 as per the age of the deceased to compute the

loss of dependency. The Claims Tribunal further awarded certain sums towards non-pecuniary damages to award the overall compensation of Rs.

7,06,608/-.

5. While submitting that the compensation awarded is exorbitant and excessive, the following contentions are raised on behalf of the Appellant

Insurance Company:-

(i) Deceased Chhotey @ Chhotey Lal was a bachelor, Respondent No. 1/mother who was aged 59 years at the time of the accident was the only

dependant. The multiplier ought to have been taken as per the age of the Claimant. Reliance is placed on 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, ; New India Assurance Company Ltd. Vs. Smt. Shanti Pathak and Others, and Ashvinbhai Jayantilal Modi Vs. Ramkaran

Ramchandra Sharma, ; and

(ii) There was no evidence with regard to better future prospects, therefore, addition of 50% towards future prospects was not permissible.

Reliance is placed on a three Judge Bench decision of the Supreme Court in Reshma Kumari and Others Vs. Madan Mohan and Another, .

6. On the other hand, Learned counsel appearing for Respondent No. 1 supports the impugned judgment. He states that the recent trend is to

adopt the multiplier for computation of loss of dependency as per the age of the deceased. Age of the Claimant has lost significance. In support of

the contention, reliance is placed on Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, ; P.S. Somanathan and Others

Vs. District Insurance Officer and Another, ; Amrit Bhanu Shali and Others Vs. National Insurance Co. Ltd. and Others, and Reshma Kumari and

Others Vs. Madan Mohan and Another, .

7. I have given my thoughtful consideration to the contentions raised on behalf of the parties.

8. 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, (SC) : (iv) Bilkish Vs. United India Insurance Co. Ltd. and Another, ; (v) National Insurance

Company Ltd. Vs. Azad Singh and Others, ; (vi) Oriental Insurance Co. Ltd. Vs. Deo Patodi and Others, , and (vii) The Divisional Manager and

The New India Assurance Co. Ltd. Vs. Mr. T. Chelladurai, Smt. D. Maragadam and C. Nivitha Varadhalakshmi, .

9. 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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 4½ 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.

15. 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.

16. 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...

17. 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:-

18. 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.

19. 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.

20. 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.

21. 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.

22. 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?

23. 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..

24. 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.

25. 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.

26. 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.

27. 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]. ...

28. 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.

29. In the instant case, the deceased was aged 30 years on the date of his death whereas the mother of the deceased was aged 59 years on the

date of his death (as per the ration card 53 years in the year 2000) . Thus, the appropriate multiplier in the instant case will be "9" as against "17"

adopted by the Claims Tribunal.

MULTIPLICAND

30. As stated earlier, in the claim petition the claimant stated that deceased Chhotey @ Chhotey Lal was working as an auto rickshaw driver and

was earning Rs. 7,500/- per month. In her Affidavit Ex.PW1/A, these facts were reiterated. In cross- examination, a bare suggestion was given

that the claimant did not possess any document with regard to deceased's income. No suggestion was given to PW-1 that deceased Chhotey @

Chhotey Lal was not an auto driver. In fact, the accident took place while the deceased was driving the three-wheeler bearing no. UP-14Y-9213.

Thus, from the manner of accident and the unchallenged testimony of PW-1 with regard to deceased's profession, it is established that the

deceased was an auto rickshaw driver by profession. The profession having been established, an attempt ought to have been made by the Claims

Tribunal to make an assessment of the deceased's income instead of taking the minimum wages of a skilled worker to compute the loss of earning.

I tend to make a guess work and hold that the deceased must at least be earning Rs. 200/- per day or in other words earning about Rs. 6,000/-

per month.

31. As far as addition of 50% towards inflation is concerned, the question was gone into at great length 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 relying on three Judge Bench

decision of the Supreme Court in Reshma Kumari and Others Vs. Madan Mohan and Another, , it was held that addition towards future prospects

is permissible only when the deceased is in settled employment or there is specific evidence in this regard. It was held that the three Judge Bench

decision in Reshma Kumari(supra) which affirmed the view taken in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another,

shall be taken as binding precedent. Consequently, no addition towards future prospects is permissible.

32. Following Sarla Verma(supra) as affirmed in Reshma Kumari(supra) , loss of dependency comes to Rs. 3,24,000/- (Rs. 6,000/- x 1/2 x 12 x

9) .

33. In view of three Judge Bench decision of the Supreme Court in Rajesh and Others Vs. Rajbir Singh and Others, , Respondent no. 1 is further

entitled to a sum of Rs. 1,00,000/- towards loss of love and affection, Rs. 25,000/- towards funeral expenses and Rs. 10,000/- towards loss to

estate.

34. The overall compensation comes to Rs. 4,59,000/-.

35. Consequently, the amount of compensation is reduced from Rs. 7,06,608/- to Rs. 4,59,000/-.

36. Excess amount of Rs. 2,47,608/- along with proportionate interest shall be refunded to the Appellant Insurance Company.

37. The compensation held payable shall be held in Fixed Deposit, which shall be released periodically in terms of the orders passed by the Claims

Tribunal.

38. The appeal is allowed in above terms.

39. Pending applications also stand disposed of.

40. Statutory amount, if any, deposited shall be released to the Appellant Insurance Company.