

[2015] 5 S.C.R. 1

SHASHIKALA & ORS.

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v.

GANGALAKSHMAMMA & ANR.

(Civil Appeal No. 2836 of 2015)

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MARCH 13, 2015

[V. GOPALA GOWDA AND R. BANUMATHI, JJ.]

*Motor Vehicles Act, 1988 – s.168 – Fatal accident – Deceased was self employed 45 years old man – Compensation – Computation of – Courts below computed the compensation without making addition towards the future prospects – On appeal for enhancement of the compensation by plea for addition towards future prospects – Held: **Per Banumathi, J:** Compensation awarded to the claimants enhanced, without adverting to the issue whether additions are to be made towards future prospects or not – **Per Gopala Gowda, J:** While enhanced compensation is agreed to, the issue of addition towards future prospects also needs to be considered – The matter to be referred to larger Bench to determine the issue.*

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*Judicial Discipline – Reference of case to larger Bench by Division Bench of Supreme Court – For deciding the issue in respect of which conflicting views were given by two Three-Judge Benches – Held: **Per Gopala Gowda, J.** Two-judge Bench cannot refer the matter directly to larger Bench of five Judges – The correct course would be to place the matter before a Bench of co-ordinate strength i.e. three-judge Bench.*

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Referring the matter, on limited issue to larger Bench,

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A the Court

HELD: Per R. BANUMATHI, J.: 1. Section 168 of the Motor Vehicles Act enjoins the courts/tribunals to make award determining the amount of compensation which appears to be just and reasonable. The wide amplitude of such power does not empower the tribunal to determine the compensation arbitrarily, although the Act is a beneficial legislation, it can neither be allowed as a source of profit nor as a windfall to the persons affected. Determination of compensation has to be fair and reasonable and acceptable by the legal standards. [Para 15] [14-D-F]

2. Without adverting to the issue whether additions are to be made towards future prospects or not, as it is obligatory on the part of the Court to award just compensation, considering the age of the deceased and the nature of business the deceased was doing, his income as stated in the income tax return for the year 2006-07 i.e. Rs. 2,02,911/- may be taken as the income of the deceased. Ten per cent of the said amount i.e. Rs.20,290/- is to be deducted towards income tax and the remaining comes to Rs.1,82,620/-. The amount to be deducted for professional tax is Rs.2,400/- and after deducting the same, the balance comes out to Rs. 1,80,220/-. The income from the house property for the year 2006-07 is shown to be Rs.20,000/- and after deducting the same, the net amount comes to Rs.1,60,220/-. Deducting 1/4th (one/fourth) towards personal expenses which comes out to Rs.40,055/-, the loss of dependency/loss of contribution is arrived at Rs.1,20,165/- per annum. The High Court has rightly taken the age of the deceased as 45 years and adopted

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multiplier 14. Total loss of dependency is calculated at Rs.16,82,310/- (Rs.1,20,165/- x 14). [Paras 16 and 17] [15-B-E, G] A

3. Substantial compensation is to be awarded towards conventional damages like loss of consortium, loss of love and affection and funeral expenses. Rs.1,00,000/- is awarded towards loss of consortium and Rs.1,00,000/- towards loss of love and affection to the minor children and Rs.25,000/- towards funeral expenses and Rs.25,000/- towards loss of estate totalling to Rs.2,50,000/-. Thus, the compensation awarded to the claimants is enhanced to Rs.19,32,310/-. [Para 18] [16-C-E] B C

Reshma Kumari & Ors. vs. Madan Mohan & Anr. (2013) 9 SCC 65; 2013 (2) SCR 706; Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr. (2009) 6 SCC 121; 2009 (5) SCR 1098; Santosh Devi vs. National Insurance Company Ltd. & Ors. (2012) 6 SCC 421; 2012 (3) SCR 1178; Nagappa vs. Gurudayal Singh & Ors. (2003) 2 SCC 274; 2002 (4) Suppl. SCR 499; Oriental Insurance Company Ltd. vs. Mohd. Nasir And Anr. (2009) 6 SCC 280; 2009 (8) SCR 829; Ningamma and Anr. vs. United India Insurance Company Ltd (2009) 13 SCC 710; 2009 (8) SCR 683; Rajesh And Ors. vs. Rajbir Singh & Ors. (2013) 9 SCC 54; 2013 (5) SCR 961; Jiju Kuruvila & Ors. vs. Kunjamma Mohan & Ors (2013) 9 SCC 166; 2013 (7) SCR 276 – relied on. D E F G

Per V. GOPALA GOWDA, J.: (Partly dissenting)

HELD: 1.1 The question of making addition to the income of the deceased towards the future prospects in H

A the case of salaried persons *vis-à-vis* where the deceased was self employed or on fixed wages, also needs to be considered. [Para 1] [17-C-D]

1.2 **Rajesh and **Santosh Devi* cases give shape
 B to the view that future prospects are to be taken into account even in case of self employment and also that there cannot be a set formula for determining such compensation. [Para 8] [25-G]

C *Sanjay Verma v. Haryana Roadways* (2014) 3 SCC 210: 2014 (1) SCR 924 – relied on.

1.3 However, the matter in relation to future prospects to be added to the annual income to determine
 D the compensation towards loss of dependency cannot be finally decided by this Court and has to be ultimately referred to a larger Bench. Therefore, the matter has to be placed before the Hon'ble Chief Justice of India for appropriate orders towards the constitution of a suitable
 E larger Bench in accordance with law. [Para 10] [27-G-H; 28-A]

Reshma Kumari & Ors. v. Madan Mohan & Anr. (2013) 9 SCC 65: 2013 (2) SCR 706; **Rajesh & Ors. v. Rajbir Singh & Ors.* (2013) 9 SCC 54: 2013 (5) SCR 961; *General Manager, Kerala State Road Transport Corporation, Trivandrum & Ors. v. Susamma Thomas & Ors.* (1994) 2 SCC 176; *Sarla Dixit & Anr. v. Balwant Yadav & Ors.* (1996) 3 SCC 179: 1996 (3) SCR 30;
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 G *Abati Bezbaruah v. Dy. Director General, Geological Survey of India & Anr.* (2003) 3 SCC 148: 2003 (1) SCR 1229; *Sarla Verma & Ors. v. Delhi Transport Corporation & Anr.* (2009) 6 SCC 121; ***Santosh Devi v. National Insurance Co. Ltd. & Ors.* (2012) 6 SCC 421:
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2012 (3) SCR 1178 – referred to.

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2. Reference made to a larger Bench in *National Insurance Company* case in view of the seeming conflict between the legal principles with respect to future prospects laid down by this Court in the cases of *Reshma Kumari* case and *Rajesh* case was not right. The reference even in the case of a perceived conflict or disagreement with the views of a two judge (or even a three judge) Bench does not permit a lower Bench formation to refer the matter straightway to a five Judge Bench. A two judge Bench as was the formation in the case of *National Insurance Company Ltd. V. Pushpa* (judgment passed by Supreme Court dated 2.7.2014) could not have referred the matter to a larger Bench. The correct view would have been to place the matter before a Bench of co-ordinate strength which decided ****Reshma Kumari* and **Rajesh* cases i.e. three judges. [Paras 7 and 9] [23-A-B, E-F; 27-F-G]

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Bharat Petroleum Corporation Ltd. v. Mumbai Shramik Sangha & Ors. (2001) 4 SCC 448: 2001 (3) SCR 208; *Pradip Chandra Parija & Ors. v. Pramod Chandra Patnaik & Ors.* (2002) 1 SCC 1 : 2001 (5) Suppl. SCR 460; *Central Board of Dawoodi Bohra Community & Anr. v. State of Maharashtra & Anr.* (2005) 2 SCC 673:2004 (6) Suppl. SCR 1054 – relied on.

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****Reshma Kumari & Ors. v. Madan Mohan & Anr.* (2013) 9 SCC 65: 2013 (2) SCR 706; **Rajesh & Ors. v. Rajbir Singh & Ors.* (2013) 9 SCC 54: 2013 (5) SCR 961 – referred to.

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BY THE COURT

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A Since there is disagreement only insofar as the addition towards the future prospects in case of self-employed or fixed wages to be added to the compensation towards the dependency, the matter may be placed before the Hon'ble the Chief Justice of India for appropriate orders

B towards the constitution of a suitable larger Bench to decide the said issue. *Pendente lite* the said issue, the enhanced compensation of Rs. 4,62,938/- along with interest at the rate of 9% p.a. from the date of the claim

C petition till the date of realisation shall be paid within four weeks from the date of present judgment by way of a demand draft or be deposited before the Motor Accident Claims Tribunal to enable the appellants herein to withdraw the same. [Paras 1 and 2] [28-D-F]

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Case Law Reference

In the judgment of BANUMATHI, J.:

	2013 (5) SCR 961	Relied on.	Para 6
E	2013 (2) SCR 706	Relied on.	Para 7
	2009 (5) SCR 1098	Relied on.	Para 9
	2012 (3) SCR 1178	Relied on.	Para 11
F	2002 (4) Suppl. SCR 499	Relied on.	Para 15
	2009 (8) SCR 829	Relied on.	Para 15
	2009 (8) SCR 683	Relied on.	Para 15
G	2013 (5) SCR 961	Relied on.	Para 18
	2013 (7) SCR 276	Relied on.	Para 18

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In the judgment of GOPALA GOWDA, J.:

2013 (2) SCR 706	Referred to.	Para 1	A
2013 (5) SCR 961	Referred to.	Para 1	
(1994) 2 SCC 176	Referred to.	Para 2	
1996 (3) SCR 30	Referred to.	Para 2	B
2003 (1) SCR 1229	Referred to.	Para 2	
(2009) 6 SCC 121	Referred to.	Para 2	
2012 (3) SCR 1178	Referred to.	Para 5	C
2001 (3) SCR 208	Relied on.	Para 7	
2001(5)Suppl.SCR 460	Relied on.	Para 7	D
2004(6)Suppl.SCR 1054	Relied on.	Para 7	

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2836 of 2015

From the Judgment and Order dated 15.07.2013 of the High Court of Karnataka at Bangalore in MFA No. 136/2009 (MV) E

Pankaj Bala Verma, Dr. Vipin Gupta, for the Appellants. F
Garvesh Kabra, for the Respondents.

The Judgments and Order of the Court were delivered by

R. BANUMATHI, J. 1. Leave granted. G

2. This appeal arises out of judgment in M.F.A. No.136/2009 (MV) dated 15.7.2013 passed by the High Court of Karnataka, in and by which, the High Court modified the award passed by the Motor Accident Claims Tribunal, Bangalore H

A (for short 'the tribunal') by enhancing the compensation to Rs.14,69,372/- from Rs.7,85,000/- awarded by the tribunal.

3. Appellant No.1 is the wife, appellants No.2 to 4 are children and appellants No.5 to 6 are the parents of the deceased Late Shri H.S. Ravi. The appellants have filed a claim petition under the Motor Vehicles Act on account of death of deceased Sri H.S. Ravi who had met with an accident on 14.12.2006. On the fateful day, the deceased Ravi was proceeding in a motor cycle as a pillion rider. The rider of the motor cycle applied sudden brake due to which both rider and pillion rider fell down and both sustained grievous injuries. The rider of the motor cycle died on the spot. Ravi who was a pillion rider sustained grievous injuries and was immediately rushed to the hospital. However, after six days i.e. on 20.12.2006, deceased—Ravi succumbed to the injuries. Deceased—Ravi was aged 45 years and he was engaged in a transport business of supplying newspapers from the Head Office destination to other places. The deceased was paying income-tax and was an income-tax assessee. Stating that the deceased was the only earning member of the family and that they have lost the support of the bread winner of the family, the claimants filed a claim petition claiming compensation of Rs.33,90,000/-.

4. The tribunal has taken the income of the deceased—Ravi at Rs.75,000/- per annum and deducting 1/3rd towards the personal expenses of the deceased, the tribunal calculated the loss of dependency at Rs.50,000/- per annum. Taking the age of the deceased as 46 years, the tribunal adopted multiplier 13 and awarded compensation of Rs.6,50,000/- (Rs.50,000/- x 13) towards loss of dependency. In addition to this, the tribunal awarded conventional damages of Rs.35,000/- (Rs.10,000/- towards loss of consortium,

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Rs.10,000/- towards loss of love and affection, Rs.10,000/- towards loss of estate and Rs.5,000/- towards funeral expenses) and Rs.1,00,000/- towards medical expenses as against the claim of Rs.1,82,150/-. Thus, the tribunal has awarded total compensation of Rs.7,85,000/-.

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5. Aggrieved by the said award of the tribunal, the appellants filed appeal before the High Court seeking enhancement of compensation. The High Court modified the award by recalculating the income of the deceased. Taking the income tax returns of the deceased for the assessment years 2005-06 and 2006-07, the High Court calculated average of the same and taken the income at Rs. 1,55,812/- per annum. After making deductions towards income-tax, professional tax and income from house property, the High Court calculated the net income of deceased at Rs.1,17,831/- per annum. The High Court deducted 1/4th towards personal expenses and to the remaining amount of Rs.88,373/- applied multiplier of 14 and accordingly re-determined the loss of dependency at Rs.12,37,222/- as against Rs.6,50,000/- awarded by the tribunal. Awarding conventional damages at Rs. 45,000/- and medical expenses at Rs.1,87,150/-, the High Court enhanced the compensation to Rs.14,69,372/-. Still aggrieved by the quantum of compensation, appellants have filed this appeal.

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6. Learned counsel for the appellants-claimants contended that the compensation awarded by the High Court was neither just nor reasonable. It was submitted that the High Court erred in calculating the average of the income from the income of the assessment years 2005-06 and 2006-07. It was further submitted that as per the decision in the case of *Rajesh and Ors. vs. Rajbir Singh & Ors¹*, the High Court

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1. (2013) 9 SCC 54

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A ought to have made an addition of 30% of the net income of
the deceased in computation of future prospects as in the
instant case deceased—Ravi was being in the age group of
40-50 years. It was also submitted that the courts below ought
to have awarded Rs. 1,00,000/- towards loss of consortium and
B substantial amount of compensation to the children-appellants
No. 2 to 4 towards loss of love and affection.

7. Learned counsel for the respondent—insurance
company submitted that in *Reshma Kumari & Ors. vs. Madan
C Mohan & Anr.*², this Court has held that where the deceased
was self-employed, it would be appropriate not to make any
addition to income for future prospects and the High Court
rightly declined to make addition towards future prospects. It
D was submitted that the deceased was engaged in the business
and was not earning fixed income and has filed returns for
different years showing different income viz., gross income of
Rs. 1,08,713/- for the assessment year 2005-06 and
Rs. 2,02,911/- for the assessment year 2006-07 which only
E indicates the disparity in income of the deceased. To strike a
balance, High Court has rightly taken the average and rightly
deducted 10% towards income tax and other deductions. It
was submitted that the compensation awarded by the High
Court is just and reasonable and no grounds have been made
F out by the claimants for enhancement of the compensation
whatsoever.

8. I have carefully considered the rival contentions and
perused the impugned judgment as also the award and the
G materials on record.

9. The deceased was doing transport business of
supplying newspapers from the Head Office to the other
destinations as per the agreement entered into between the

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group of newspapers and himself. It is also not in dispute that the deceased was an income tax assessee and he has filed income tax returns for the assessment years 2005-06 and 2006-07. The claimants had filed income tax returns of the deceased for the assessment years 2005-06 and 2006-07 with gross total income of Rs.1,08,713/- and Rs.2,02,911/- respectively including the income from the house property. Total income of both the years comes to Rs.3,11,624/- and the High Court has taken the average of it which comes to Rs.1,55,812/-. High Court deducted 10% of the said amount towards income-tax and taken the balance amount to Rs.1,40,231/-. The High Court had further deducted Rs.2,400/- towards professional tax and income from the house property shown as Rs.20,000/- and the net income was calculated at Rs.1,17,831/-. Since the claimants are six in numbers as per the decision in *Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr³*, one-fourth($1/4^{\text{th}}$) deduction was made towards personal expenses. The loss of dependency was thus calculated at Rs.88,373/-. Taking the age of deceased at 45 years, the High Court adopted multiplier 14 and calculated the total loss of dependency at Rs.12,37,222/-.

10. The deceased was aged 45 years and was doing transport business. Though the claimants have filed income tax returns for two assessment years 2005-06 and 2006-07, as per the income tax returns for the year 2006-07, the income of the assessee was Rs.2,02,911/-. Tribunal did not take the income of the deceased for the assessment year 2006-07 on the ground that only xerox copy was filed and the claimants have failed to examine income-tax authorities to prove the same. Instead of taking the income of the deceased as per the assessment year 2006-07, the High Court has chosen to calculate the average of the income for two assessment years

A 2005-06 and 2006-07. Considering the age of the deceased
and the nature of business he was doing, in my considered
view, the High Court was not justified in so taking the average
of income of the two assessment years. The deceased was
aged 45 years and doing business. Admittedly, he was also
B owning agricultural lands. Even though agricultural income
was not shown in the income tax return, it emerges from the
evidence that the deceased was also doing agricultural work.

C 11. On behalf of the claimants, reliance was placed
upon *Rajesh's case* (supra) to contend that even in the case
of self-employed persons or persons with fixed wages, there
must be an addition to the income of the deceased towards
future prospects. In *Sarla Verma's case* (supra), this Court
D held that in case of salaried persons additions have to be
made depending upon the age of the deceased to the actual
income of the deceased while computing future prospects. In
Santosh Devi vs. National Insurance Company Ltd. & Ors⁴,
Sarla Verma was explained and it was held that the benefit
E of making addition to total income of persons who are self-
employed or getting fixed wages was permissible.

F 12. The principles laid down in *Santosh Devi's case*
(supra) were reiterated in *Rajesh and Ors. vs. Rajbir Singh*
& Ors. (supra), wherein this Court held that the case of self-
employed persons or persons with fixed wages, the actual
income of the deceased must be enhanced for purpose of
computation viz. (i) by 50% where his age was below 40 years;
(ii) by 30% where he belonged to age group of 40 to 50 years,
G and (iii) by 15% where he was between age group of 50 to
60 years. However, it was observed that no such addition/
enhancement was permissible where deceased exceeded the
age of 60 years. Further, in *Rajesh* (supra), this Court while
reiterating the meaning of "just compensation" with reference

H 4. (2012) 6 SCC 421

to settled principles observed that, at the time of fixing such compensation, the court should not succumb to the niceties or technicalities to grant just compensation in favour of the claimant. It is the duty of the court to equate, as far as possible, the misery on account of the accident with the compensation so that the injured or the dependants should not face the vagaries of life on account of discontinuance of the income earned by the victim, and the court's duty is to award just, equitable, fair and reasonable compensation, irrespective of claim made.

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13. Considering the question of making addition to the income of the deceased towards the future prospects in cases of salaried persons *vis-à-vis* in cases where the deceased was self-employed or on a fixed wage/salary, in *Reshma Kumari and Ors. vs. Madan Mohan and Anr⁵*, this Court held as under :-

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"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

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A only be justified in extraordinary circumstances and very exceptional cases.”

14. The decision in *Reshma Kumari's* case was rendered at earlier point of time (2.04.2013) and *Rajesh's* case was pronounced subsequently (12.04.2013). Pointing out the divergent opinion expressed in the above cases and expressing the view that regarding the manner of addition of income for future prospects in case of self-employed or on fixed wages there should be an authoritative pronouncement, in *National Insurance Company vs. Pushpa* {S.L.P (C) No.16735/2014}, the matter has been referred to a larger Bench by the order dated 2.07.2014, in which one of us (Hon'ble Mr. Justice V. Gopala Gowda) was a member, which is pending consideration.

15. Section 168 of the Motor Vehicles Act enjoins the courts/tribunals to make award determining the amount of compensation which appears to be just and reasonable. The wide amplitude of such power does not empower the tribunal to determine the compensation arbitrarily, although the Act is a beneficial legislation, it can neither be allowed as a source of profit nor as a windfall to the persons affected. Determination of compensation has to be fair and reasonable and acceptable by the legal standards. In *Nagappa vs. Gurudayal Singh & Ors*⁶, this Court held as under:-

“10. Thereafter, Section 168 empowers the Claims Tribunal to “make an award determining the amount of compensation which appears to it to be just”. Therefore, the only requirement for determining the compensation is that it must be “just”. There is no other limitation or restriction on its power for awarding just compensation”.

6. (2003) 2 SCC 274

7. (2009) 6 SCC 280

The same principle was reiterated in the decisions of *Oriental Insurance Company Ltd. vs. Mohd. Nasir⁷ and Anr.*, and *Ningamma and Anr. vs. United India Insurance Company Ltd⁸*.

16. Without advertent to the issue whether additions are to be made towards future prospects or not, as it is obligatory on the part of the Court to award just compensation, considering the age of the deceased and the nature of business he was doing, in my view, the income of the deceased as stated in the income tax return for the year 2006-07 i.e. Rs. 2,02,911/- may be taken as the income of the deceased. Ten per cent of the said amount i.e. Rs.20,290/- is to be deducted towards income tax and the remaining comes to Rs.1,82,620/- . The amount to be deducted for professional tax is Rs.2,400/- and after deducting the same, the balance comes out to Rs. 1,80,220/-. The income from the house property for the year 2006-07 is shown to be Rs.20,000/- and after deducting the same, the net amount comes to Rs.1,60,220/-. Deducting 1/4th (one/fourth) towards personal expenses which comes out to Rs.40,055/-, the loss of dependency/loss of contribution is arrived at Rs.1,20,165/- per annum.

17. Insofar as appropriate multiplier, the date of birth of the deceased as per driving licence was 16.6.1961. On the date of accident i.e. 14.12.2006, the deceased was aged 45 years, 5 months and 28 days and the tribunal has taken the age as 46 years. Since the deceased has completed only 45 years, the High Court has rightly taken the age of the deceased as 45 years and adopted multiplier 14 which is the appropriate multiplier and the same is maintained. Total loss of dependency is calculated at Rs.16,82,310/- (Rs.1,20,165/- x 14).

18. With respect to the award of compensation towards

8. (2009) 13 SCC 710

- A conventional heads, the tribunal has awarded only Rs.10,000/- towards loss of consortium and Rs.10,000/- towards love and affection, Rs.10,000/- towards loss of estate and Rs.5,000/- towards funeral charges. The High Court totally awarded Rs.45,000/- towards conventional heads such as
- B loss of estate, loss of love and affection, loss of consortium, transportation of dead body and funeral expenses. In various decisions, this Court has held that substantial compensation is to be awarded towards conventional damages like loss of
- C consortium, loss of love and affection and funeral expenses. In *Rajesh And Ors. vs. Rajbir Singh & Ors.*, (supra) and *Jiju Kuruvila & Ors. vs. Kunjamma Mohan & Ors*⁹, this Court has awarded substantial amount of Rs.1,00,000/- towards loss of consortium and Rs.1,00,000/- towards loss of love and
- D affection and Rs.25,000/- towards funeral expenses. Following the same, Rs.1,00,000/- is awarded towards loss of consortium and Rs.1,00,000/- towards loss of love and affection to the minor children and Rs.25,000/- towards funeral expenses and Rs.25,000/- towards loss of estate totalling to Rs.2,50,000/-.
- E Thus, the compensation awarded to the claimants is enhanced to Rs.19,32,310/-.

19. In the result, the compensation awarded to the claimants is enhanced and the compensation is awarded at
- F Rs.19,32,310/-. The enhanced compensation of Rs.4,62,938/- is payable with interest at the rate of 9% per annum from the date of the claim petition till the date of realisation. Out of enhanced compensation of Rs.4,62,938/-, Rs.3,12,938/- alongwith accrued interest shall be paid to the first appellant-
- G wife of the deceased, balance Rs.1,50,000/- alongwith accrued interest shall be apportioned amongst the claimants 2 to 4. If the appellants 2 to 4 are still minors claimants, their share of the enhanced compensation shall be invested in a nationalized
- H bank on the same terms as directed by the High Court. In

9. (2013) 9 SCC 166

case, the appellants No. 2 to 4 have already attained majority, they are permitted to withdraw their entire share of apportioned compensation. A

20. The impugned judgment of the High Court is modified and the appeal is allowed. In the facts and circumstances of the case, no order as to costs. B

V. GOPALA GOWDA, J. 1. I have perused the judgment written by my learned Sister Mrs. Justice R. Banumathi in the above-mentioned matter. I am in respectful agreement with all the points which are answered in favour of the appellants-claimants, except for the non-consideration on the question of making addition to the income of the deceased towards the future prospects in the case of salaried persons *vis-à-vis* where the deceased was self employed or on fixed wages after adverting to the judgments of this Court in *Reshma Kumari & Ors. v. Madan Mohan & Anr.*¹, *Rajesh & Ors. v. Rajbir Singh & Ors.*², the relevant paragraphs of which are extracted hereinafter. C D E

2. After considering the legal principles laid down by this Court in the case of (1) *General Manager, Kerala State Road Transport Corporation, Trivandrum & Ors. v. Susamma Thomas & Ors.*³; (2) *Sarla Dixit & Anr. v. Balwant Yadav & Ors.*⁴ and (3) *Abati Bezbaruah v. Dy. Director General, Geological Survey of India & Anr.*⁵, this Court, on the question of future prospects in the case of *Sarla Verma & Ors. v. Delhi Transport Corporation & Anr.*⁶ has held as follows:- F G

1 (2013) 9 SCC 65

2 (2013) 9 SCC 54

3 (1994) 2 SCC 176

4 (1996) 3 SCC 179

5 (2003) 3 SCC 148

6 (2009) 6 SCC 121

A “24. In *Susamma Thomas*, this Court increased the
income by nearly 100%, in *Sarla Dixit* the income was
increased only by 50% and in *Abati Bezbaruah* the
income was increased by a mere 7%. In view of the
imponderables and uncertainties, we are in favour of
B 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
C 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
D 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
E (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.”

F 3. Interestingly, in *Reshma Kumari & Ors.* (supra),
which was ultimately decided in 2.4.2013 by a three judge
Bench, which arose out of the matter referred by the order of
two judge Bench dated 23.7.2009. That order had referred
two questions:-

G “(1) Whether 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

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(2) Whether for determination of the multiplicand, the 1988 Act provides for any criterion, particularly as regards determination of future prospect.”

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4. The referring Bench (in *Reshma Kumari & Ors.*-supra) had in fact, envisioned a situation where future prospects in private employment too, were to be taken into consideration (although in a slightly different context). The relevant paragraph of the referring Bench of this Court in the case of *Reshma Kumari & Ors.* is extracted hereunder:-

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“46. In the Indian context several other factors should be taken into consideration including education of the dependants and the nature of job. In the wake of changed societal conditions and global scenario, future prospects may have to be taken into consideration not only having regard to the status of the employee, his educational qualification; his past performance but also other relevant factors, namely, the higher salaries and perks which are being offered by the private companies these days...”

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Ultimately, the question of future prospects was decided in the Larger Bench judgment of this Court in *Reshma Kumari's* case. The relevant paragraph is extracted hereunder:

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“39. The standardisation 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

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A 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
B 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.”

C 5. In **Santosh Devi v. National Insurance Co. Ltd.**
& Ors.⁷, a two judge Bench of this Court had earlier doubted
the decision with respect to future prospects in **Sarla Verma**
(supra) and interpreted the limiting of grant of compensation
D amount to a person who is self-employed, privately employed
or is engaged on fixed wages if he /she becomes victim of an
accident. The relevant paragraphs as discussed by this Court
in **Santosh Devi's** case is extracted hereunder:-

E “14. We find it extremely difficult to fathom any rationale
for the observation made in para 24 of the judgment in
Sarla Verma case that where the deceased was self-
employed or was on a fixed salary without provision for
annual increment, etc., the courts will usually take only
F the actual income at the time of death and a departure
from this rule should be made only in rare and exceptional
cases involving special circumstances. In our view, it will
be naïve to say that the wages or total emoluments/
G income of a person who is self-employed or who is
employed on a fixed salary without provision for annual
increment, etc., would remain the same throughout his
life.

H 15. The rise in the cost of living affects everyone across
the board. It does not make any distinction between rich

and poor. As a matter of fact, the effect of rise in prices which directly impacts the cost of living is minimal on the rich and maximum on those who are self-employed or who get fixed income/emoluments. They are the worst affected people. Therefore, they put in extra efforts to generate additional income necessary for sustaining their families.

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16. The salaries of those employed under the Central and State Governments and their agencies/instrumentalities have been revised from time to time to provide a cushion against the rising prices and provisions have been made for providing security to the families of the deceased employees. The salaries of those employed in private sectors have also increased manifold. Till about two decades ago, nobody could have imagined that salary of Class IV employee of the Government would be in five figures and total emoluments of those in higher echelons of service will cross the figure of rupees one lakh.

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17. Although the wages/income of those employed in unorganised sectors has not registered a corresponding increase and has not kept pace with the increase in the salaries of the government employees and those employed in private sectors, but it cannot be denied that there has been incremental enhancement in the income of those who are self-employed and even those engaged on daily basis, monthly basis or even seasonal basis. We can take judicial notice of the fact that with a view to meet the challenges posed by high cost of living, the persons falling in the latter category periodically increase the cost of their labour. In this context, it may be useful to give an example of a tailor who earns his livelihood by stitching clothes. If the cost of living increases and the

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A prices of essentials go up, it is but natural for him to
increase the cost of his labour. So will be the cases of
ordinary skilled and unskilled labour, like, barber,
blacksmith, cobbler, mason, etc.

B 18. Therefore, we do not think that while making the
observations in the last three lines of para 24 of *Sarla*
Verma judgment, the Court had intended to lay down an
absolute rule that there will be no addition in the income
C of a person who is self-employed or who is paid fixed
wages. Rather, it would be reasonable to say that a
person who is self-employed or is engaged on fixed
wages will also get 30% increase in his total income over
a period of time and if he/she becomes the victim of an
D accident then the same formula deserves to be applied
for calculating the amount of compensation.”

E 6. In *Rajesh & Ors.* (supra), a three judge Bench
decision of this Court, which took into consideration the
decisions of this Court in the cases of *Sarla Verma & Ors.*
and *Santosh Devi* (supra) held thus:

F “8. Since, the Court in *Santosh Devi* case actually
intended to follow the principle in the case of salaried
persons as laid down in *Sarla Verma* case and to make
it applicable also to the self-employed and persons on
fixed wages, it is clarified that the increase in the case of
those groups is not 30% always; it will also have a
reference to the age. In other words, in the case of self-
G employed or persons with fixed wages, in case, the
deceased victim was below 40 years, there must be an
addition of 50% to the actual income of the deceased
while computing future prospects. Needless to say that
the actual income should be income after paying the tax,
H if any. Addition should be 30% in case the deceased

was in the age group of 40 to 50 years.” A

7. Further, in **National Insurance Company Ltd. v. Pushpa**, this Court in SLP No. 16735 of 2014 (arising out of CC No. 8058 of 2014) vide order dated 2.7.2014 made a reference to a larger Bench in view of the seeming conflict between the legal principles with respect to future prospects laid down by this Court in the cases of **Reshma Kumari & Ors.** and **Rajesh & Ors.** (supra). The relevant para from the **National Insurance Company** case (supra) is extracted hereunder:- B
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“Be it noted, though the decision in **Reshma** (supra) was rendered at earlier 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.” D
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Though, I am a party to the above reference, at the same time, it is worth mentioning that the reference even in the case of a perceived conflict or disagreement with the views of a two judge (or even a three judge) Bench does not permit a lower Bench formation to refer the matter straightway to a five Judge Bench. This principle was stated in **Bharat Petroleum Corporation Ltd. v. Mumbai Shramik Sangha & Ors.**⁸ In that judgment, the Constitution Bench held that a decision of a Constitution Bench binds Benches of two and three learned Judges of this Court and that judicial discipline obliges them to follow it, regardless of their doubts about its correctness. At the most, they can direct that the matter to be heard by a Bench of three learned Judges. In **Pradip Chandra Parija & Ors. v. Pramod Chandra Patnaik & Ors.**⁹, a Bench of two learned H

8 (2001) 4 SCC 448

9 (2002) 1 SCC 1

A judges expressed reservations with the judgment of a three
judge Bench and directed the matter to be placed before a
larger Bench of five judges. The Constitution Bench held that
the rule of '*judicial discipline and propriety*' as well as the
theory of precedents permitted only a Bench of the same
B quorum to question the correctness of the decision by another
Bench of co-ordinate strength upon which the matter can be
placed for consideration by a Bench of larger quorum. A Bench
of lesser quorum cannot thus, express disagreement with, or
question the correctness of, the view of a Bench of a larger
C quorum. ***Central Board of Dawoodi Bohra Community &
Anr. v. State of Maharashtra & Anr.***¹⁰ summarized, for future
guidance, the correct approach in such matters. The relevant
para of the said case is extracted hereunder:-

D "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
E 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.

F (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
G 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
H 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.

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(3) The above rules are subject to two exceptions:

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(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

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(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 and Hansoli Devi*."

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8. Hence, I am of the opinion that the *Rajesh & Ors.* (supra) itself applied the *Santosh Devi* (supra) case, even while clarifying that for self employed individuals, age is also a determining factor, as is seen in the observation in the case of *Rajesh & Ors.* (supra) that in the case of self-employed or persons with fixed wages, in case, the deceased victim was below 40 years, there must be an addition of 50% to the actual

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A income of the deceased while computing future prospects.

In fact, this gives shape to the view that future prospects are to be taken into account even in case of self employment and also that there cannot be a set formula for determining

B such compensation. The best application of this view may be seen in ***Sanjay Verma v. Haryana Roadways***¹¹ where the facts were noticed as follows :

C “12. The appellant was a self-employed person. Though he had claimed a monthly income of Rs.5000/-, the income tax returns filed by him demonstrate that he had paid income tax on an annual income of Rs.41,300/-. No fault, therefore, can be found in the order of the High Court which proceeds on the basis that the annual income of
D the claimant at the time of the accident was Rs 41,300/-
...”

Then, this Court after noticing the decisions of this Court in the cases of ***Sarla Verma & Ors.***, ***Santosh Devi***, and the three Judge Bench of this Court in ***Reshma Kumari & Ors. and Rajesh & Ors.*** (supra) applied the law in the following manner in ***Sanjay Verma's*** case (supra):-
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F “16. Undoubtedly, the same principle will apply for determination of loss of income on account of an accident resulting in the total disability of the victim as in the present case. Therefore, taking into account the age of the claimant (25 years) and the fact that he had a steady income, as evidenced by the income tax returns, we are
G of the view that an addition of 50% to the income that the claimant was earning at the time of the accident would be justified.

H 17. Insofar as the multiplier is concerned, as held in ***Sarla***

Verma or as prescribed under the Second Schedule to the Act, the correct multiplier in the present case cannot be 15 as held by the High Court. We are of the view that the adoption of the multiplier of 17 would be appropriate. Accordingly, taking into account the addition to the income and the higher multiplier the total amount of compensation payable to the claimant under the head "loss of income" is Rs.10,53,150/- (Rs.41,300/- + Rs.20,650/- = Rs.61,950/- × 17)."

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The clarification of the position, by a three judge Bench, in *Rajesh & Ors.*, *ipso facto* could not have led to the conclusion that there was a conflict between the views of various Benches, since *Santosh Devi* itself had noticed *Sarla Verma*, the logic of which in respect of limiting compensation for non-permanent employment was clarified.

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9. The above facts recount the position as emerging from a combined reading of various orders and judgments. What is clear is that a two judge Bench as was the formation in the case of *National Insurance Company Ltd. v. Pushpa* (supra) could not, having regard to the settled legal principle outlined in the decision of this Court in *Central Board of Dawoodi Bohar Community* (supra) have referred the matter to a larger Bench. The correct view would have been to place the matter before a Bench of co-ordinate strength which decided *Reshma Kumari & Ors.* and *Rajesh & Ors.* (supra), i.e. three judges.

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10. However, I agree that the matter in relation to future prospects to be added to the annual income to determine the compensation towards loss of dependency cannot be finally decided by us and has to be ultimately referred to a larger Bench - because I was a party to the reference in *National Insurance Co. Ltd. v. Pushpa* (supra) and more importantly,

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A cannot in propriety recall that reference while I am part of another Bench presently. In view of the observations, the matter has to be placed before the Hon'ble Chief Justice of India for appropriate orders towards the constitution of a suitable larger Bench in accordance with law.

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ORDER

1. Since we have disagreed only insofar as the addition towards the future prospects in case of self-employed or fixed wages to be added to the compensation towards the dependency, the matter may be placed before the Hon'ble the Chief Justice of India for appropriate orders towards the constitution of a suitable larger Bench to decide the said issue.

D 2. *Pendente lite* the said issue, the enhanced compensation of Rs. 4,62,938/- along with interest at the rate of 9% p.a. from the date of the claim petition till the date of realisation shall be paid within four weeks from today by way of a demand draft or be deposited before the Motor Accident Claims Tribunal, Bangalore, to enable the appellants herein to withdraw the same.

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Kalpana K. Tripathy

Matter referred to larger Bench.

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