REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELALTE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) NO. 25590 OF 2014

National Insurance Company Limited ...Petitioner(s)

Versus

Pranay Sethi and Ors. ...Respondent(s)

WITH

Special Leave Petition (Civil) No. 16735 of 2014

Civil Appeal No. 6961 of 2015

Special Leave Petition (Civil) No. 163 of 2016

Special Leave Petition (Civil) No. 3387of 2016

Special Leave Petition (Civil) No. 7076 of 2016

Special Leave Petition (Civil) No. 32844 of 2016

Special Leave Petition (Civil) No. 16056 of 2016

Special Leave Petition (Civil) No. 22134 of 2016

Special Leave Petition (Civil) No. 24163 of 2016

Civil Appeal No. 8770 of 2016

Civil Appeal Nos. 8045-8046 of 2016

Special Leave Petition (Civil) No. 26263 of 2016

Special Leave Petition (Civil) No. 25818 of 2016

Special Leave Petition (Civil) No. 26227 of 2016

Special Leave Petition (Civil) Nos. 29520-29521 of 2016

Special Leave Petition (Civil) No. 35679 of 2016

Special Leave Petition (Civil) No. 34237 of 2016

Special Leave Petition (Civil) No. 36072 of 2016

Special Leave Petition (Civil) No. 35371 of 2016

Special Leave Petition (Civil) No. 34395 of 2016

Special Leave Petition (Civil) No. 36027 of 2016

Special Leave Petition (Civil) No. 8306 of 2017

Special Leave Petition (Civil) No. 37617 of 2016

Special Leave Petition (Civil) No. 7241 of 2017

Civil Appeal No.12046 of 2017

Special Leave Petition (Civil) No. 17436 of 2017

Civil Appeal No. 8611 of 2017

J U D G M E N T

Dipak Misra, CJI.

Perceiving cleavage of opinion between ***Reshma Kumari and others v. Madan Mohan and another***[1] and ***Rajesh and others v. Rajbir Singh and others***[2], both three-Judge Bench decisions, a two-Judge Bench of this Court in ***National Insurance Company Limited v. Pushpa and others***[3] thought it appropriate to refer the matter to a larger Bench for an

[1] (2013) 9 SCC 65
[2] (2013) 9 SCC 54
[3] (2015) 9 SCC 166

authoritative pronouncement, and that is how the matters have been placed before us.

2. In the course of deliberation we will be required to travel backwards covering a span of two decades and three years and may be slightly more and thereafter focus on the axis of the controversy, that is, the decision in ***Sarla Verma and others v. Delhi Transport Corporation and another***[4] wherein the two-Judge Bench made a sanguine endeavour to simplify the determination of claims by specifying certain parameters.

3. Before we penetrate into the past, it is necessary to note what has been stated in ***Reshma Kumari*** (supra) and ***Rajesh's*** case. In ***Reshma Kumari*** the three-Judge Bench was answering the reference made in ***Reshma Kumari and others v. Madan Mohan and another***[5]. The reference judgment noted divergence of opinion with regard to the computation under Sections 163-A and 166 of the Motor Vehicles Act, 1988 (for brevity, "the Act") and the methodology for computation of future prospects. Dealing with determination of future prospects, the Court referred to the decisions in ***Sarla Dixit v. Balwant Yadav***[6],

[4] (2009) 6 SCC 121
[5] (2009) 13 SCC 422
[6] (1996) 3 SCC 179

Abati Bezbaruah v. Dy. Director General, Geological Survey of India[7] and the principle stated by Lord Diplock in ***Mallett v. McMonagle***[8] and further referring to the statement of law in ***Wells v. Wells***[9] observed:-

> "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. In fact while determining the multiplicand this Court in *Oriental Insurance Co. Ltd. v. Jashuben* [10] held that even dearness allowance and perks with regard thereto from which the family would have derived monthly benefit, must be taken into consideration.
>
> 47. One of the incidental issues which has also to be taken into consideration is inflation. Is the practice of taking inflation into consideration wholly incorrect? Unfortunately, unlike other developed countries in India there has been no scientific study. It is expected that with the rising inflation the rate of interest would go up. In India it does not happen. It, therefore, may be a relevant factor which may be taken into consideration for determining the actual ground reality. No hard-and-fast rule, however, can be laid down therefor.

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[7] (2003) 3 SCC 148
[8] 1970 AC 166: (1969) 2 WLR 767
[9] (1999) 1 AC 345
[10] (2008) 4 SCC 162

> 48. A large number of English decisions have been placed before us by Mr Nanda to contend that inflation may not be taken into consideration at all. While the reasonings adopted by the English courts and its decisions may not be of much dispute, we cannot blindly follow the same ignoring ground realities.
>
> 49. We have noticed the precedents operating in the field as also the rival contentions raised before us by the learned counsel for the parties with a view to show that law is required to be laid down in clearer terms."

4. In the said case, the Court considered the common questions that arose for consideration. They are:-

> "(1) Whether the multiplier specified in the Second Schedule appended to the Act should be scrupulously applied in all the cases?
> (2) Whether for determination of the multiplicand, the Act provides for any criterion, particularly as regards determination of future prospects?"

5. Analyzing further the rationale in determining the laws under Sections 163-A and 166, the Court had stated thus:-

> "58. We are not unmindful of the Statement of Objects and Reasons to Act 54 of 1994 for introducing Section 163-A so as to provide for a new predetermined formula for payment of compensation to road accident victims on the basis of age/income, which is more liberal and rational. That may be so, but it defies logic as to why in a similar situation, the injured claimant or his heirs/legal representatives, in the case of death, on proof of negligence on the part of the driver of a motor vehicle would get a lesser amount than the

> one specified in the Second Schedule. The courts, in our opinion, should also bear that factor in mind."

6. Noticing the divergence of opinion and absence of any clarification from Parliament despite the recommendations by this Court, it was thought appropriate that the controversy should be decided by the larger Bench and accordingly it directed to place the matter before Hon'ble the Chief Justice of India for appropriate orders for constituting a larger Bench.

7. The three-Judge Bench answering the reference referred to the Scheme under Sections 163-A and 166 of the Act and took note of the view expressed by this Court in ***U.P. State Road Transport Corporation and others v. Trilok Chandra and others***[11], wherein the Court had stated:-

> "17. The situation has now undergone a change with the enactment of the Motor Vehicles Act, 1988, as amended by Amendment Act 54 of 1994. The most important change introduced by the amendment insofar as it relates to determination of compensation is the insertion of Sections 163-A and 163-B in Chapter XI entitled 'Insurance of motor vehicles against third-party risks'. Section 163-A begins with a non obstante clause and provides for payment of compensation, as indicated in the Second Schedule, to the legal representatives of the deceased or injured, as the case may be. Now if we turn to the Second Schedule, we find a Table fixing the mode of calculation of compensation for third-party accident injury claims arising out of fatal

[11] (1996) 4 SCC 362

accidents. The first column gives the age group of the victims of accident, the second column indicates the multiplier and the subsequent horizontal figures indicate the quantum of compensation in thousand payable to the heirs of the deceased victim. According to this Table the multiplier varies from 5 to 18 depending on the age group to which the victim belonged. Thus, under this Schedule the maximum multiplier can be up to 18 and not 16 as was held in *Susamma Thomas*[12] case.

18. We must at once point out that the calculation of compensation and the amount worked out in the Schedule suffer from several defects. For example, in Item 1 for a victim aged 15 years, the multiplier is shown to be 15 years and the multiplicand is shown to be Rs 3000. The total should be 3000 × 15 = 45,000 but the same is worked out at Rs 60,000. Similarly, in the second item the multiplier is 16 and the annual income is Rs 9000; the total should have been Rs 1,44,000 but is shown to be Rs 1,71,000. To put it briefly, the Table abounds in such mistakes. Neither the tribunals nor the courts can go by the ready reckoner. It can only be used as a guide. Besides, the selection of multiplier cannot in all cases be solely dependent 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. But these mistakes are limited to actual calculations only and not in respect of other items. What we propose to emphasise is that the multiplier cannot exceed 18 years' purchase factor. This is the improvement over the earlier position that ordinarily it should not exceed 16. We thought it necessary to state the correct legal position as courts and tribunals are using higher multiplier as in the present case where the Tribunal used the multiplier of 24 which the High Court raised to 34, thereby showing lack of

[12] (1994) 2 SCC 176

> awareness of the background of the multiplier system in Davies case."
>
> [Underlining is ours]

8. The Court also referred to ***Supe Dei v. National Insurance Company Limited***[13] wherein it has been opined that the position is well settled that the Second Schedule under Section 163-A to the Act which gives the amount of compensation to be determined for the purpose of claim under the section can be taken as a guideline while determining the compensation under Section 166 of the Act.

9. After so observing, the Court also noted the authorities in ***United India Insurance Co. Ltd v. Patricia Jean Mahajan***[14], ***Deepal Girishbhai Soni v. United India Insurance Co. Ltd.***[15], and ***Jashuben*** (supra). It is perceivable from the pronouncement by the three-Judge Bench that it has referred to *Sarla Verma* and observed that the said decision reiterated what had been stated in earlier decisions that the principles relating to determination of liability and quantum of compensation were different for claims made under Section 163-A and claims made under Section 166. It was further observed that Section 163-A and the Second Schedule in terms did not apply to determination of

[13] (2009) 4 SCC 513
[14] (2002) 6 SCC 281
[15] (2004) 5 SCC 385

compensation in applications under Section 166. In ***Sarla Verma*** (supra), as has been noticed further in ***Reshma Kumari*** (supra), the Court found discrepancies/errors in the multiplier scale given in the Second Schedule Table and also observed that application of Table may result in incongruities.

10. The three-Judge Bench further apprised itself that in ***Sarla Verma*** (supra) the Court had undertaken the exercise of comparing the multiplier indicated in ***Susamma Thomas*** (supra), ***Trilok Chandra*** (supra), and ***New India Assurance Co. Ltd v. Charlie and another***[16] for claims under Section 166 of the Act with the multiplier mentioned in the Second Schedule for claims under Section 163-A and compared the formula and held that the multiplier shall be used in a given case in the following manner:-

> "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, Trilok Chandra and Charlie), 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."

[16] (2005) 10 SCC 720

11. After elaborately analyzing what has been stated in ***Sarla Verma*** (supra), the three-Judge Bench referred to the language employed in Section 168 of the Act which uses the expression "just". Elucidating the said term, the Court held that it conveys that the amount so determined is fair, reasonable and equitable by accepted legal standard and not on forensic lottery. The Court observed "just compensation" does not mean "perfect" or "absolute compensation" and the concept of just compensation principle requires examination of the particular situation obtaining uniquely in an individual case. In that context, it referred to ***Taff Vale Railway Co. v. Jenkins***[17] and held:-

> "36. In *Sarla Verma*, this Court has endeavoured to simplify the otherwise complex exercise of assessment of loss of dependency and determination of compensation in a claim made under Section 166. It has been rightly stated in *Sarla Verma* that the claimants in case of death claim for the purposes of compensation must establish (a) age of the deceased; (b) income of the deceased; and (c) the number of dependants. To arrive at the loss of dependency, the Tribunal must consider (i) additions/deductions to be made for arriving at the income; (ii) the deductions to be made towards the personal living expenses of the deceased; and (iii) the multiplier to be applied with reference to the age of the deceased. We do not think it is necessary for us to revisit the law on the point as we are in full agreement with the view in *Sarla Verma*."
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> [Emphasis is added]

[17] 1913 AC 1 : (1911-13) All ER Rep 160 (HL)

12. And further:-

> "It is high time that we move to a standard method of selection of multiplier, income for future prospects and deduction for personal and living expenses. The courts in some of the overseas jurisdictions have made this advance. It is for these reasons, we think we must approve the Table in *Sarla Verma* for the selection of multiplier in claim applications made under Section 166 in the cases of death. We do accordingly. If for the selection of multiplier, Column (4) of the Table in *Sarla Verma* is followed, there is no likelihood of the claimants who have chosen to apply under Section 166 being awarded lesser amount on proof of negligence on the part of the driver of the motor vehicle than those who prefer to apply under Section 163-A. As regards the cases where the age of the victim happens to be up to 15 years, we are of the considered opinion that in such cases irrespective of Section 163-A or Section 166 under which the claim for compensation has been made, multiplier of 15 and the assessment as indicated in the Second Schedule subject to correction as pointed out in Column (6) of the Table in *Sarla Verma* should be followed. This is to ensure that the claimants in such cases are not awarded lesser amount when the application is made under Section 166 of the 1988 Act. In all other cases of death where the application has been made under Section 166, the multiplier as indicated in Column (4) of the Table in *Sarla Verma* should be followed."

This is how the first question the Court had posed stood answered.

13. With regard to the addition of income for future prospects, this Court in ***Reshma Kumari*** (supra) adverted to Para 24 of the *Sarla Verma's* case and held:-

> "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 than 50 years. Where the annual income is in the taxable range, the actual salary shall mean actual salary less tax. In the cases where the deceased was self-employed or was on a fixed salary without provision for annual increments, the actual income at the time of death without any addition to income for future prospects will be appropriate. A departure from the above principle can only be justified in extraordinary circumstances and very exceptional cases."

The aforesaid analysis vividly exposits that standardization of addition to income for future prospects is helpful in achieving certainty in arriving at appropriate compensation. Thus, the larger Bench has concurred with the view expressed by ***Sarla Verma*** (supra) as per the determination of future income.

14. It is interesting to note here that while the reference was pending, the judgment in ***Santosh Devi v. National Insurance***

Company Limited and others[18] was delivered by a two-Judge Bench which commented on the principle stated in *Sarla Verma*. It said:-

> "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 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/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.
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> 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

[18] (2012) 6 SCC 421

> 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 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.
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> 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 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 victim of an accident then the same formula deserves to be applied for calculating the amount of compensation."

15. The aforesaid analysis in ***Santosh Devi*** (supra) may *prima facie* show that the two-Judge Bench has distinguished the

observation made in *Sarla Verma's* case but on a studied scrutiny, it becomes clear that it has really expressed a different view than what has been laid down in ***Sarla Verma*** (supra). If we permit ourselves to say so, the different view has been expressed in a distinctive tone, for the two-Judge Bench had stated that it was extremely difficult to fathom any rationale for the observations made in para 24 of the judgment in *Sarla Verma's* case in respect of self-employed or a person on fixed salary without provision for annual increment, etc. This is a clear disagreement with the earlier view, and we have no hesitation in saying that it is absolutely impermissible keeping in view the concept of binding precedents.

16. Presently, we may refer to certain decisions which deal with the concept of binding precedent.

17. In ***State of Bihar v. Kalika Kuer alias Kalika Singh and others***[19], it has been held:-

> "10. ... an earlier decision may seem to be incorrect to a Bench of a coordinate jurisdiction considering the question later, on the ground that a possible aspect of the matter was not considered or not raised before the court or more aspects should have been gone into by the court deciding the matter earlier but it would not be a reason to say that the

[19] (2003) 5 SCC 448

> decision was rendered per incuriam and liable to be ignored. The earlier judgment may seem to be not correct yet it will have the binding effect on the later Bench of coordinate jurisdiction. …"

The Court has further ruled:-

> "10. … Easy course of saying that earlier decision was rendered per incuriam is not permissible and the matter will have to be resolved only in two ways — either to follow the earlier decision or refer the matter to a larger Bench to examine the issue, in case it is felt that earlier decision is not correct on merits."

18. In ***G.L. Batra v. State of Haryana and others***[20], the Court has accepted the said principle on the basis of judgments of this Court rendered in ***Union of India v. Godfrey Philips India Ltd.*** [21] , ***Sundarjas Kanyalal Bhatija v. Collector, Thane, Maharashtra***[22] and ***Tribhovandas Purshottamdas Thakkar v. Ratilal Motilal Patel*** [23] . It may be noted here that the Constitution Bench in ***Madras Bar Association v. Union of India and another*** [24] has clearly stated that the prior Constitution Bench judgment in ***Union of India v. Madras Bar Association***[25] is a binding precedent. Be it clarified, the issues

[20] (2014) 13 SCC 759
[21] (1985) 4 SCC 369
[22] (1989) 3 SCC 396
[23] AIR 1968 SC 372
[24] (2015) 8 SCC 583
[25] (2010) 11 SCC 1

that were put to rest in the earlier Constitution Bench judgment were treated as precedents by latter Constitution Bench.

19. In this regard, we may refer to a passage from ***Jaisri Sahu v. Rajdewan Dubey***[26]***:-***

> "11. Law will be bereft of all its utility if it should be thrown into a state of uncertainty by reason of conflicting decisions, and it is therefore desirable that in case of difference of opinion, the question should be authoritatively settled. It sometimes happens that an earlier decision given by a Bench is not brought to the notice of a Bench hearing the same question, and a contrary decision is given without reference to the earlier decision. The question has also been discussed as to the correct procedure to be followed when two such conflicting decisions are placed before a later Bench. The practice in the Patna High Court appears to be that in those cases, the earlier decision is followed and not the later. In England the practice is, as noticed in the judgment in *Seshamma v. Venkata Narasimharao* that the decision of a court of appeal is considered as a general rule to be binding on it. There are exceptions to it, and one of them is thus stated in Halsbury's Laws of England, 3rd Edn., Vol. 22, para 1687, pp. 799-800:
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> > "The court is not bound to follow a decision of its own if given per incuriam. A decision is given per incuriam when the court has acted in ignorance of a previous decision of its own or of a Court of a co-ordinate jurisdiction which covered the case before it, or when it has acted in ignorance of a decision of the House of Lords. In the former case it must decide which decision to follow, and in the latter it is bound by the decision of the House of Lords."

[26] AIR 1962 SC 83

> In *Virayya v. Venkata Subbayya* it has been held by the Andhra High Court that under the circumstances aforesaid the Bench is free to adopt that view which is in accordance with justice and legal principles after taking into consideration the views expressed in the two conflicting Benches, vide also the decision of the Nagpur High Court in *Bilimoria v. Central Bank of India*. The better course would be for the Bench hearing the case to refer the matter to a Full Bench in view of the conflicting authorities without taking upon itself to decide whether it should follow the one Bench decision or the other. We have no doubt that when such situations arise, the Bench hearing cases would refer the matter for the decision of a Full Court."

20. Though the aforesaid was articulated in the context of the High Court, yet this Court has been following the same as is revealed from the aforestated pronouncements including that of the Constitution Bench and, therefore, we entirely agree with the said view because it is the precise warrant of respecting a precedent which is the fundamental norm of judicial discipline.

21. In the context, we may fruitfully note what has been stated in ***Pradip Chandra Parija and others v. Pramod Chandra Patnaik and others***[27]. In the said case, the Constitution Bench was dealing with a situation where the two-Judge Bench disagreeing with the three-Judge Bench decision directed the

[27] (2002) 1 SCC 1

matter to be placed before a larger Bench of five Judges of this Court. In that scenario, the Constitution Bench stated:-

> "6. … In our view, judicial discipline and propriety demands that a Bench of two learned Judges should follow a decision of a Bench of three learned Judges. But if a Bench of two learned Judges concludes that an earlier judgment of three learned Judges is so very incorrect that in no circumstances can it be followed, the proper course for it to adopt is to refer the matter before it to a Bench of three learned Judges setting out, as has been done here, the reasons why it could not agree with the earlier judgment. …"

22. In ***Chandra Prakash and others v. State of U.P. and another***[28], another Constitution Bench dealing with the concept of precedents stated thus:-

> "22. … The doctrine of binding precedent is of utmost importance in the administration of our judicial system. It promotes certainty and consistency in judicial decisions. Judicial consistency promotes confidence in the system, therefore, there is this need for consistency in the enunciation of legal principles in the decisions of this Court. It is in the above context, this Court in the case of *Raghubir Singh*[29] held that a pronouncement of law by a Division Bench of this Court is binding on a Division Bench of the same or smaller number of Judges. …"

23. Be it noted, ***Chandra Prakash*** concurred with the view expressed in ***Raghubir Singh*** and ***Pradip Chandra Parija***.

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[28] (2002) 4 SCC 234
[29] (1989) 2 SCC 754

24. In ***Sandhya Educational Society and another v. Union of India and others***[30], it has been observed that judicial decorum and discipline is paramount and, therefore, a coordinate Bench has to respect the judgments and orders passed by another coordinate Bench. In ***Rattiram and others v. State of Madhya Pradesh***[31], the Court dwelt upon the issue what would be the consequent effect of the latter decision which had been rendered without noticing the earlier decisions. The Court noted the observations in ***Raghubir Singh*** (supra) and reproduced a passage from ***Indian Oil Corporation Ltd. v. Municipal Corporation***[32] which is to the following effect:-

> "8. … The Division Bench of the High Court in *Municipal Corpn., Indore v. Ratnaprabha Dhanda* was clearly in error in taking the view that the decision of this Court in *Ratnaprabha* was not binding on it. In doing so, the Division Bench of the High Court did something which even a later co-equal Bench of this Court did not and could not do. …"

25. It also stated what has been expressed in ***Raghubir Singh*** (supra) by R.S. Pathak, C.J. It is as follows:-

> "28. We are of opinion that a pronouncement of law by a Division Bench of this Court is binding on a Division Bench of the same or a smaller number of Judges, and in order that such decision be binding,

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[30] (2014) 7 SCC 701
[31] (2012) 4 SCC 516
[32] (1995) 4 SCC 96

> it is not necessary that it should be a decision rendered by the Full Court or a Constitution Bench of the Court. …"

26. In ***Rajesh*** (supra) the three-Judge Bench had delivered the judgment on 12.04.2013. The purpose of stating the date is that it has been delivered after the pronouncement made in *Reshma Kumari's* case. On a perusal of the decision in ***Rajesh*** (supra), we find that an attempt has been made to explain what the two-Judge Bench had stated in ***Santosh Devi*** (supra). The relevant passages read as follows:-

> "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-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, if any. Addition should be 30% in case the deceased was in the age group of 40 to 50 years.
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> 9. In *Sarla Verma* case, it has been stated that in the case of those above 50 years, there shall be no addition. Having regard to the fact that in the case of those self-employed or on fixed wages, where there is normally no age of superannuation, we are of the view that it will only be just and equitable to provide an addition of 15% in the case where the victim is between the age group of 50 to 60 years so

> as to make the compensation just, equitable, fair and reasonable. There shall normally be no addition thereafter."

27. At this juncture, it is necessitous to advert to another three-Judge Bench decision in ***Munna Lal Jain and another v. Vipin Kumar Sharma and others***[33] . In the said case, the three-Judge Bench commenting on the judgments stated thus:-

> "2. In the absence of any statutory and a straitjacket formula, there are bound to be grey areas despite several attempts made by this Court to lay down the guidelines. Compensation would basically depend on the evidence available in a case and the formulas shown by the courts are only guidelines for the computation of the compensation. That precisely is the reason the courts lodge a caveat stating "ordinarily", "normally", "exceptional circumstances", etc., while suggesting the formula."

28. After so stating, the Court followed the principle stated in *Rajesh*. We think it appropriate to reproduce what has been stated by the three-Judge Bench:-

> "10. As far as future prospects are concerned, in *Rajesh* v. *Rajbir Singh*, a three-Judge Bench of this Court held that in case of self-employed persons also, if the deceased victim is below 40 years, there must be addition of 50% to the actual income of the deceased while computing future prospects."

29. We are compelled to state here that in ***Munna Lal Jain*** (supra), the three-Judge Bench should have been guided by the

[33] (2015) 6 SCC 347

principle stated in *Reshma Kumari* which has concurred with the view expressed in *Sarla Devi* or in case of disagreement, it should have been well advised to refer the case to a larger Bench. We say so, as we have already expressed the opinion that the dicta laid down in *Reshma Kumari* being earlier in point of time would be a binding precedent and not the decision in *Rajesh*.

30. In this context, we may also refer to ***Sundeep Kumar Bafna v. State of Maharashtra and another***[34] which correctly lays down the principle that discipline demanded by a precedent or the disqualification or diminution of a decision on the application of the *per incuriam* rule is of great importance, since without it, certainty of law, consistency of rulings and comity of courts would become a costly casualty. A decision or judgment can be *per incuriam* any provision in a statute, rule or regulation, which was not brought to the notice of the court. A decision or judgment can also be *per incuriam* if it is not possible to reconcile its ratio with that of a previously pronounced judgment of a co-equal or larger Bench. There can be no scintilla of doubt that an earlier decision of co-equal Bench binds the Bench of same strength. Though the judgment in ***Rajesh's*** case was delivered on a later date, it had not apprised itself of the law stated in

[34] (2014) 16 SCC 623

Reshma Kumari (supra) but had been guided by ***Santosh Devi*** (supra). We have no hesitation that it is not a binding precedent on the co-equal Bench.

31. At this stage, a detailed analysis of ***Sarla Verma*** (supra) is necessary. In the said case, the Court recapitulated the relevant principles relating to assessment of compensation in case of death and also took note of the fact that there had been considerable variation and inconsistency in the decision for Courts and Tribunals on account of adopting the method stated in ***Nance v. British Columbia Electric Railway Co. Ltd***. [35] and the method in ***Davies v. Powell Duffryn Associated Collieries Ltd.***[36]. It also analysed the difference between the considerations of the two different methods by this Court in ***Susamma Thomas*** (supra) wherein preference was given to ***Davies*** method to the ***Nance*** method. Various paragraphs from ***Susamma Thomas*** (supra) and ***Trilok Chandra*** (supra) have been reproduced and thereafter it has been observed that lack of uniformity and consistency in awarding the compensation has been a matter of grave concern. It has stated that when different tribunals

[35] 1951 SC 601 : (1951) 2 All ER 448 (PC)
[36] 1942 AC 601 : (1942) 1 All ER 657 (HL)

calculate compensation differently on the same facts, the claimant, the litigant and the common man are bound to be confused, perplexed and bewildered. It adverted to the observations made in ***Trilok Chandra*** (supra) which are to the following effect:-

> "15. We thought it necessary to reiterate the method of working out 'just' compensation because, of late, we have noticed from the awards made by tribunals and courts that the principle on which the multiplier method was developed has been lost sight of and once again a hybrid method based on the subjectivity of the Tribunal/court has surfaced, introducing uncertainty and lack of reasonable uniformity in the matter of determination of compensation. It must be realised that the Tribunal/court has to determine a fair amount of compensation awardable to the victim of an accident which must be proportionate to the injury caused. ..."

32. While adverting to the addition of income for future prospects, it stated thus:-

> "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 adopting as a rule of thumb, an addition of 50% of actual salary to the actual salary income of the deceased towards future prospects, where the deceased had a permanent job and was below 40 years. (Where the annual income is in the taxable range, the words "actual salary" should be read as "actual salary less tax"). The addition should be

> only 30% if the age of the deceased was 40 to 50 years. There should be no addition, where the age of the deceased is more than 50 years. Though the evidence may indicate a different percentage of increase, it is necessary to standardise the addition to avoid different yardsticks being applied or different methods of calculation being adopted. Where the deceased was self-employed or was on a fixed salary (without provision for annual increments, etc.), the courts will usually take only the actual income at the time of death. A departure therefrom should be made only in rare and exceptional cases involving special circumstances."

33. Though we have devoted some space in analyzing the precedential value of the judgments, that is not the thrust of the controversy. We are required to keenly dwell upon the heart of the issue that emerges for consideration. The seminal controversy before us relates to the issue where the deceased was self-employed or was a person on fixed salary without provision for annual increment, etc., what should be the addition as regards the future prospects. In ***Sarla Verma***, the Court has made it as a rule that 50% of actual salary could be added if the deceased had a permanent job and if the age of the deceased is between 40 – 50 years and no addition to be made if the deceased was more than 50 years. It is further ruled that where deceased was self-employed or had a fixed salary (without provision for annual increment, etc.) the Courts will usually take only the actual income at the time of death and the departure is

permissible only in rare and exceptional cases involving special circumstances.

34. First, we shall deal with the reasoning of straitjacket demarcation between the permanent employed persons within the taxable range and the other category where deceased was self-employed or employed on fixed salary sans annual increments, etc.

35. The submission, as has been advanced on behalf of the insurers, is that the distinction between the stable jobs at one end of the spectrum and self-employed at the other end of the spectrum with the benefit of future prospects being extended to the legal representatives of the deceased having a permanent job is not difficult to visualize, for a comparison between the two categories is a necessary ground reality. It is contended that guaranteed/definite income every month has to be treated with a different parameter than the person who is self-employed inasmuch as the income does not remain constant and is likely to oscillate from time to time. Emphasis has been laid on the date of expected superannuation and certainty in permanent job in contradistinction to the uncertainty on the part of a self-employed person. Additionally, it is contended that the

permanent jobs are generally stable and for an assessment the entity or the establishment where the deceased worked is identifiable since they do not suffer from the inconsistencies and vagaries of self-employed persons. It is canvassed that it may not be possible to introduce an element of standardization as submitted by the claimants because there are many a category in which a person can be self-employed and it is extremely difficult to assimilate entire range of self-employed categories or professionals in one compartment. It is also asserted that in certain professions addition of future prospects to the income as a part of multiplicand would be totally an unacceptable concept. Examples are cited in respect of categories of professionals who are surgeons, sports persons, masons and carpenters, etc. It is also highlighted that the range of self-employed persons can include unskilled labourer to a skilled person and hence, they cannot be put in a holistic whole. That apart, it is propounded that experience of certain professionals brings in disparity in income and, therefore, the view expressed in ***Sarla Verma*** (supra) that has been concurred with ***Reshma Kumari*** (supra) should not be disturbed.

36. Quite apart from the above, it is contended that the principle of standardization that has been evolved in ***Sarla Verma*** (supra) has been criticized on the ground that it grants compensation without any nexus to the actual loss. It is also urged that even if it is conceded that the said view is correct, extension of the said principle to some of the self-employed persons will be absolutely unjustified and untenable. Learned counsel for the insurers further contended that the view expressed in ***Rajesh*** (supra) being not a precedent has to be overruled and the methodology stood in ***Sarla Verma*** (supra) should be accepted.

37. On behalf of the claimants, emphasis is laid on the concept of "just compensation" and what should be included within the ambit of "just compensation". Learned counsel have emphasized on ***Davies*** method and urged that the grant of pecuniary advantage is bound to be included in the future pecuniary benefit. It has also been put forth that in right to receive just compensation under the statute, when the method of standardization has been conceived and applied, there cannot be any discrimination between the person salaried or self-employed. It is highlighted that if evidence is not required to be adduced in

one category of cases, there is no necessity to compel the other category to adduce evidence to establish the foundation for addition of future prospects.

38. Stress is laid on reasonable expectation of pecuniary benefits relying on the decisions in ***Tafe Vale Railway Co.*** (supra) and the judgment of Singapore High Court in ***Nirumalan V Kanapathi Pillay v. Teo Eng Chuan***[37]. Lastly, it is urged that the standardization formula for awarding future income should be applied to self-employed persons and that would be a justifiable measure for computation of loss of dependency.

39. Before we proceed to analyse the principle for addition of future prospects, we think it seemly to clear the maze which is vividly reflectible from ***Sarla Verma***, ***Reshma Kumari***, ***Rajesh*** and ***Munna Lal Jain***. Three aspects need to be clarified. The first one pertains to deduction towards personal and living expenses. In paragraphs 30, 31 and 32, ***Sarla Verma*** lays down:-

> "30. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in *Trilok Chandra*[4], the general practice is to apply standardised deductions. Having considered several subsequent decisions of this

[37] (2003) 3 SLR (R) 601

Court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependent family members is 4 to 6, and one-fifth (1/5th) where the number of dependent family members exceeds six.

31**.** Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent(s) and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependant. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependants, because they will either be independent and earning, or married, or be dependent on the father.

32. Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where the family of the bachelor is large and dependent on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third."

40. In ***Reshma Kumari***, the three-Judge Bench agreed with the multiplier determined in ***Sarla Verma*** and eventually held that

the advantage of the Table prepared in ***Sarla Verma*** is that uniformity and consistency in selection of multiplier can be achieved. It has observed:-

> "35. … The assessment of extent of dependency depends on examination of the unique situation of the individual case. Valuing the dependency or the multiplicand is to some extent an arithmetical exercise. The multiplicand is normally based on the net annual value of the dependency on the date of the deceased's death. Once the net annual loss (multiplicand) is assessed, taking into account the age of the deceased, such amount is to be multiplied by a "multiplier" to arrive at the loss of dependency."

41. In ***Reshma Kumari***, the three-Judge Bench, reproduced paragraphs 30, 31 and 32 of *Sarla Verma* and approved the same by stating thus:-

> "41. The above does provide guidance for the appropriate deduction for personal and living expenses. One must bear in mind that the proportion of a man's net earnings that he saves or spends exclusively for the maintenance of others does not form part of his living expenses but what he spends exclusively on himself does. The percentage of deduction on account of personal and living expenses may vary with reference to the number of dependent members in the family and the personal living expenses of the deceased need not exactly correspond to the number of dependants.
>
> 42. In our view, the standards fixed by this Court in *Sarla Verma* on the aspect of deduction for personal living expenses in paras 30, 31 and 32 must ordinarily be followed unless a case for departure in the

circumstances noted in the preceding paragraph is made out."

42. The conclusions that have been summed up in ***Reshma Kumari*** are 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, the Claims Tribunals shall select the multiplier as indicated in Column (4) of the Table prepared in *Sarla Verma* read with para 42 of that judgment.

43.2. In cases where the age of the deceased is up to 15 years, irrespective of Section 166 or Section 163-A under which the claim for compensation has been made, multiplier of 15 and the assessment as indicated in the Second Schedule subject to correction as pointed out in Column (6) of the Table in *Sarla Verma* should be followed.

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* for determination of compensation in cases of death.

43.5. While making addition to income for future prospects, the Tribunals shall follow para 24 of the judgment in *Sarla Verma*.

43.6. Insofar as deduction for personal and living expenses is concerned, it is directed that the Tribunals shall ordinarily follow the standards prescribed in paras 30, 31 and 32 of the judgment in *Sarla Verma*

> subject to the observations made by us in para 41 above."

43. On a perusal of the analysis made in *Sarla Verma* which has been reconsidered in *Reshma Kumari*, we think it appropriate to state that as far as the guidance provided for appropriate deduction for personal and living expenses is concerned, the tribunals and courts should be guided by conclusion 43.6 of *Reshma Kumari*. We concur with the same as we have no hesitation in approving the method provided therein.

44. As far as the multiplier is concerned, the claims tribunal and the Courts shall be guided by Step 2 that finds place in paragraph 19 of *Sarla Verma* read with paragraph 42 of the said judgment. For the sake of completeness, paragraph 42 is extracted below :-

> "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*, *Trilok Chandra* and *Charlie*), 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."

45. In *Reshma Kumari*, the aforesaid has been approved by stating, thus:-

> "It is high time that we move to a standard method of selection of multiplier, income for future prospects and deduction for personal and living expenses. The courts in some of the overseas jurisdictions have made this advance. It is for these reasons, we think we must approve the Table in *Sarla Verma* for the selection of multiplier in claim applications made under Section 166 in the cases of death. We do accordingly. If for the selection of multiplier, Column (4) of the Table in *Sarla Verma* is followed, there is no likelihood of the claimants who have chosen to apply under Section 166 being awarded lesser amount on proof of negligence on the part of the driver of the motor vehicle than those who prefer to apply under Section 163-A. As regards the cases where the age of the victim happens to be up to 15 years, we are of the considered opinion that in such cases irrespective of Section 163-A or Section 166 under which the claim for compensation has been made, multiplier of 15 and the assessment as indicated in the Second Schedule subject to correction as pointed out in Column (6) of the Table in *Sarla Verma* should be followed. This is to ensure that the claimants in such cases are not awarded lesser amount when the application is made under Section 166 of the 1988 Act. In all other cases of death where the application has been made under Section 166, the multiplier as indicated in Column (4) of the Table in *Sarla Verma* should be followed."

46. At this stage, we must immediately say that insofar as the aforesaid multiplicand/multiplier is concerned, it has to be accepted on the basis of income established by the legal representatives of the deceased. Future prospects are to be

added to the sum on the percentage basis and "income" means actual income less than the tax paid. The multiplier has already been fixed in *Sarla Verma* which has been approved in *Reshma Kumari* with which we concur.

47. In our considered opinion, if the same is followed, it shall subserve the cause of justice and the unnecessary contest before the tribunals and the courts would be avoided.

48. Another aspect which has created confusion pertains to grant of loss of estate, loss of consortium and funeral expenses. In ***Santosh Devi*** (supra), the two-Judge Bench followed the traditional method and granted Rs. 5,000/- for transportation of the body, Rs. 10,000/- as funeral expenses and Rs. 10,000/- as regards the loss of consortium. In *Sarla Verma*, the Court granted Rs. 5,000/- under the head of loss of estate, Rs. 5,000/- towards funeral expenses and Rs. 10,000/- towards loss of Consortium. In *Rajesh*, the Court granted Rs. 1,00,000/- towards loss of consortium and Rs. 25,000/- towards funeral expenses. It also granted Rs. 1,00,000/- towards loss of care and guidance for minor children. The Court enhanced the same on the principle that a formula framed to achieve uniformity and consistency on a socio-economic issue has to be contrasted from a legal principle

and ought to be periodically revisited as has been held in *Santosh Devi* (supra). On the principle of revisit, it fixed different amount on conventional heads. What weighed with the Court is factum of inflation and the price index. It has also been moved by the concept of loss of consortium. We are inclined to think so, for what it states in that regard. We quote:-

> "17. … In legal parlance, "consortium" is the right of the spouse to the company, care, help, comfort, guidance, society, solace, affection and sexual relations with his or her mate. That non-pecuniary head of damages has not been properly understood by our courts. The loss of companionship, love, care and protection, etc., the spouse is entitled to get, has to be compensated appropriately. The concept of non-pecuniary damage for loss of consortium is one of the major heads of award of compensation in other parts of the world more particularly in the United States of America, Australia, etc. English courts have also recognised the right of a spouse to get compensation even during the period of temporary disablement. By loss of consortium, the courts have made an attempt to compensate the loss of spouse's affection, comfort, solace, companionship, society, assistance, protection, care and sexual relations during the future years. Unlike the compensation awarded in other countries and other jurisdictions, since the legal heirs are otherwise adequately compensated for the pecuniary loss, it would not be proper to award a major amount under this head. Hence, we are of the view that it would only be just and reasonable that the courts award at least rupees one lakh for loss of consortium."

49. Be it noted, ***Munna Lal Jain*** (supra) did not deal with the same as the notice was confined to the issue of application of correct multiplier and deduction of the amount.

50. This aspect needs to be clarified and appositely stated. The conventional sum has been provided in the Second Schedule of the Act. The said Schedule has been found to be defective as stated by the Court in ***Trilok Chandra*** (supra). Recently in ***Puttamma and others v. K.L. Narayana Reddy and another***[38] it has been reiterated by stating:-

> "... we hold that the Second Schedule as was enacted in 1994 has now become redundant, irrational and unworkable due to changed scenario including the present cost of living and current rate of inflation and increased life expectancy."

51. As far as multiplier or multiplicand is concerned, the same has been put to rest by the judgments of this Court. Para 3 of the Second Schedule also provides for General Damages in case of death. It is as follows:-

> "3. General Damages (in case of death):
>
> The following General Damages shall be payable in addition to compensation outlined above:-
>
> (i) Funeral expenses - Rs. 2,000/-
> (ii) Loss of Consortium, if beneficiary is the spouse – Rs. 5,000/-

[38] (2013) 15 SCC 45

(iii) Loss of Estate - Rs. 2,500/-
(iv) Medical Expenses – actual expenses incurred before death supported by bills/vouchers but not exceeding – Rs. 15,000/-"

52. On a perusal of various decisions of this Court, it is manifest that the Second Schedule has not been followed starting from the decision in ***Trilok Chandra*** (supra) and there has been no amendment to the same. The conventional damage amount needs to be appositely determined. As we notice, in different cases different amounts have been granted. A sum of Rs. 1,00,000/- was granted towards consortium in *Rajesh*. The justification for grant of consortium, as we find from *Rajesh*, is founded on the observation as we have reproduced hereinbefore.

53. On the aforesaid basis, the Court has revisited the practice of awarding compensation under conventional heads.

54. As far as the conventional heads are concerned, we find it difficult to agree with the view expressed in *Rajesh.* It has granted Rs. 25,000/- towards funeral expenses, Rs. 1,00,000/- loss of consortium and Rs. 1,00,000/- towards loss of care and guidance for minor children. The head relating to loss of care and minor children does not exist. Though ***Rajesh*** refers to ***Santosh Devi***, it does not seem to follow the same. The conventional and

traditional heads, needless to say, cannot be determined on percentage basis because that would not be an acceptable criterion. Unlike determination of income, the said heads have to be quantified. Any quantification must have a reasonable foundation. There can be no dispute over the fact that price index, fall in bank interest, escalation of rates in many a field have to be noticed. The court cannot remain oblivious to the same. There has been a thumb rule in this aspect. Otherwise, there will be extreme difficulty in determination of the same and unless the thumb rule is applied, there will be immense variation lacking any kind of consistency as a consequence of which, the orders passed by the tribunals and courts are likely to be unguided. Therefore, we think it seemly to fix reasonable sums. It seems to us that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The principle of revisiting the said heads is an acceptable principle. But the revisit should not be fact-centric or quantum-centric. We think that it would be condign that the amount that we have quantified should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years. We are

disposed to hold so because that will bring in consistency in respect of those heads.

55. Presently, we come to the issue of addition of future prospects to determine the multiplicand.

56. In ***Santosh Devi*** the Court has not accepted as a principle that a self-employed person remains on a fixed salary throughout his life. It has taken note of the rise in the cost of living which affects everyone without making any distinction between the rich and the poor. Emphasis has been laid on the extra efforts made by this category of persons to generate additional income. That apart, judicial notice has been taken of the fact that the salaries of those who are employed in private sectors also with the passage of time increase manifold. In ***Rajesh's*** case, the Court had added 15% in the case where the victim is between the age group of 15 to 60 years so as to make the compensation just, equitable, fair and reasonable. This addition has been made in respect of self-employed or engaged on fixed wages.

57. Section 168 of the Act deals with the concept of "just compensation" and the same has to be determined on the foundation of fairness, reasonableness and equitability on acceptable legal standard because such determination can never

be in arithmetical exactitude. It can never be perfect. The aim is to achieve an acceptable degree of proximity to arithmetical precision on the basis of materials brought on record in an individual case. The conception of "just compensation" has to be viewed through the prism of fairness, reasonableness and non-violation of the principle of equitability. In a case of death, the legal heirs of the claimants cannot expect a windfall. Simultaneously, the compensation granted cannot be an apology for compensation. It cannot be a pittance. Though the discretion vested in the tribunal is quite wide, yet it is obligatory on the part of the tribunal to be guided by the expression, that is, "just compensation". The determination has to be on the foundation of evidence brought on record as regards the age and income of the deceased and thereafter the apposite multiplier to be applied. The formula relating to multiplier has been clearly stated in ***Sarla Verma*** (supra) and it has been approved in ***Reshma Kumari*** (supra). The age and income, as stated earlier, have to be established by adducing evidence. The tribunal and the Courts have to bear in mind that the basic principle lies in pragmatic computation which is in proximity to reality. It is a well accepted norm that money cannot substitute a life lost but an effort has to be made for grant of just compensation having uniformity of

approach. There has to be a balance between the two extremes, that is, a windfall and the pittance, a bonanza and the modicum. In such an adjudication, the duty of the tribunal and the Courts is difficult and hence, an endeavour has been made by this Court for standardization which in its ambit includes addition of future prospects on the proven income at present. As far as future prospects are concerned, there has been standardization keeping in view the principle of certainty, stability and consistency. We approve the principle of "standardization" so that a specific and certain multiplicand is determined for applying the multiplier on the basis of age.

58. The seminal issue is the fixation of future prospects in cases of deceased who is self-employed or on a fixed salary. ***Sarla Verma*** (supra) has carved out an exception permitting the claimants to bring materials on record to get the benefit of addition of future prospects. It has not, *per se,* allowed any future prospects in respect of the said category.

59. Having bestowed our anxious consideration, we are disposed to think when we accept the principle of standardization, there is really no rationale not to apply the said principle to the self-employed or a person who is on a fixed

salary. To follow the doctrine of actual income at the time of death and not to add any amount with regard to future prospects to the income for the purpose of determination of multiplicand would be unjust. The determination of income while computing compensation has to include future prospects so that the method will come within the ambit and sweep of just compensation as postulated under Section 168 of the Act. In case of a deceased who had held a permanent job with inbuilt grant of annual increment, there is an acceptable certainty. But to state that the legal representatives of a deceased who was on a fixed salary would not be entitled to the benefit of future prospects for the purpose of computation of compensation would be inapposite. It is because the criterion of distinction between the two in that event would be certainty on the one hand and staticness on the other. One may perceive that the comparative measure is certainty on the one hand and uncertainty on the other but such a perception is fallacious. It is because the price rise does affect a self-employed person; and that apart there is always an incessant effort to enhance one's income for sustenance. The purchasing capacity of a salaried person on permanent job when increases because of grant of increments and pay revision or for some other change in service conditions, there is always a

competing attitude in the private sector to enhance the salary to get better efficiency from the employees. Similarly, a person who is self-employed is bound to garner his resources and raise his charges/fees so that he can live with same facilities. To have the perception that he is likely to remain static and his income to remain stagnant is contrary to the fundamental concept of human attitude which always intends to live with dynamism and move and change with the time. Though it may seem appropriate that there cannot be certainty in addition of future prospects to the existing income unlike in the case of a person having a permanent job, yet the said perception does not really deserve acceptance. We are inclined to think that there can be some degree of difference as regards the percentage that is meant for or applied to in respect of the legal representatives who claim on behalf of the deceased who had a permanent job than a person who is self-employed or on a fixed salary. But not to apply the principle of standardization on the foundation of perceived lack of certainty would tantamount to remaining oblivious to the marrows of ground reality. And, therefore, degree-test is imperative. Unless the degree-test is applied and left to the parties to adduce evidence to establish, it would be unfair and inequitable. The degree-test has to have the inbuilt concept of

percentage. Taking into consideration the cumulative factors, namely, passage of time, the changing society, escalation of price, the change in price index, the human attitude to follow a particular pattern of life, etc., an addition of 40% of the established income of the deceased towards future prospects and where the deceased was below 40 years an addition of 25% where the deceased was between the age of 40 to 50 years would be reasonable.

60. The controversy does not end here. The question still remains whether there should be no addition where the age of the deceased is more than 50 years. *Sarla Verma* thinks it appropriate not to add any amount and the same has been approved in *Reshma Kumari*. Judicial notice can be taken of the fact that salary does not remain the same. When a person is in a permanent job, there is always an enhancement due to one reason or the other. To lay down as a thumb rule that there will be no addition after 50 years will be an unacceptable concept. We are disposed to think, there should be an addition of 15% if the deceased is between the age of 50 to 60 years and there should be no addition thereafter. Similarly, in case of self-employed or person on fixed salary, the addition should be 10%

between the age of 50 to 60 years. The aforesaid yardstick has been fixed so that there can be consistency in the approach by the tribunals and the courts.

61. In view of the aforesaid analysis, we proceed to record our conclusions:-

(i) The two-Judge Bench in *Santosh Devi* should have been well advised to refer the matter to a larger Bench as it was taking a different view than what has been stated in *Sarla Verma*, a judgment by a coordinate Bench. It is because a coordinate Bench of the same strength cannot take a contrary view than what has been held by another coordinate Bench.

(ii) As *Rajesh* has not taken note of the decision in *Reshma Kumari*, which was delivered at earlier point of time, the decision in *Rajesh* is not a binding precedent.

(iii) While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was

between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.

(iv) In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.

(v) For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the courts shall be guided by paragraphs 30 to 32 of *Sarla Verma* which we have reproduced hereinbefore.

(vi) The selection of multiplier shall be as indicated in the Table in *Sarla Verma* read with paragraph 42 of that judgment.

(vii) The age of the deceased should be the basis for applying the multiplier.

(viii) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years.

62. The reference is answered accordingly. Matters be placed before the appropriate Bench.

.....CJI.
(Dipak Misra)

.....J.
(A.K. Sikri)

.....J.
(A.M. Khanwilkar)

.....J.
(Dr. D.Y. Chandrachud)

.....J.
(Ashok Bhushan)

New Delhi;
October 31, 2017