

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

FAO Nos. 2216 & 3138 of 2002 (O&M)
Date of Decision: January 31, 2017

Ramesh Vij and others

..Appellant(s)

Versus

M/s. JCT Mills and others

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. H.S. Thiara, Advocate
for the appellants.

None for respondents no.1 & 2.

Mr. D.P. Gupta, Advocate
for respondent no.3.

ANITA CHAUDHRY, J.

The appellants are the claimants who are seeking enhancement of the award allowed by the Motor Accident Claims Tribunal, Hoshiarpur.

It is necessary to first refer to the facts to appreciate the case of the appellants and to find out as to whether the appellants are entitled to any enhancement. An accident had taken place on 18.09.1998, in which Darshna wife of Ramesh Vij and Bandana d/o Ramesh Vij had died. Two claim petitions were filed by Ramesh Vij and his son & daughter seeking compensation for both the deaths. The accident had taken place when Darshna and her daughter were travelling with the family in a Tata Sumo car from Bassi Ballo to Haridwar. The vehicle was driven by Hardev Singh who also died in the

accident. The family had left their village at 4:00 PM and were proceeding to Haridwar to perform the last rites of the father of Ramesh Vij. Their car was ahead of village Rurki Kalan, P.S. Balachaur when a truck driven by respondent no.2 came from Balachaur side and hit the Tata Sumo car after coming to the wrong side of the road. Darshna and Bandana died on the spot. The driver Hardev's body was split into two pieces and his head was torn and thrown on one side and dragged along with the truck while the lower portion of the body remained in the vehicle. The accident took place on account of negligence of respondent no.1 who was caught by the people at the place of accident and a case was got registered on the statement of Ramesh.

The Tribunal recorded a finding that it was respondent no.1 who was responsible for the accident and awarded Rs.1,18,000/- for the death of Darshna and Rs.85,000/- for the death of Bandna.

The records have been summoned.

The counsel for the appellants had urged that the Tribunal had wrongly taken the age of Darshna to be 47 years when the date of birth was available on record and she was 43 years old and the correct multiplier should have been 14 instead of 12. It was urged that the Tribunal had not awarded compensation on the head of loss of consortium and a meagre amount had been allowed for the last rites, which was required to be increased and each child was entitled to higher amount on account of loss of love and affection. It was urged that though the Court had noted that the date of birth of Darshna was 02.01.1955 but had wrongly taken her age to be 47 years.

The date of birth of Darshna was available on the record and she was 43 years of age. The multiplier applicable should have been 14 instead of 12. I also find that the Tribunal has not awarded any amount for loss of consortium or for loss of love and affection and the award requires modification.

Darshna was a house wife. Though it was claimed that she was running a dairy farm but no evidence was led. Darshna had left behind two children but their age is not reflected in the claim petition. The Tribunal had taken the loss to the family at Rs.900/- per month and after deducting 1/3rd towards personal expenses, the loss of dependency was taken as Rs.700/- per month. No submission was made with respect to the amount upon which the calculations have been made. Therefore, taking the loss of dependency as Rs.700/- per month and applying the multiplier of 14, the compensation would come to $700 \times 12 \times 14 =$ Rs.1,17,600/-. A sum of Rs.15,000/- is allowed towards funeral expenses instead of Rs.10,000/- allowed by the Tribunal and a sum of Rs.25,000/- is added as loss of consortium and Rs.25,000/- each for two children on the heads of loss of love and affection. The total of this comes to Rs.2,07,600/-. The Tribunal had awarded Rs.1,18,000/-, which would be deducted and the remaining amount would be payable to the appellants at the same rate of interest as awarded by the Tribunal, from the date of filing of the appeal till realization.

Now coming to the case of Bandana, she was 21 years old at the time of the accident. The claimants had pleaded that she was giving tuitions and was earning up to Rs.1,000/- per month and used to

help her mother in house-hold work. It had also come in the evidence that she was a student in a college. Her bank account was also placed on record but the statement Ex.P5 does not show that she had any income. The claimants had produced a certificate Annexure A-9 to show her date of birth. She had completed her 21 years at the time of the accident. The father had admitted that Bandana had got a compartment in B.A. part one. The Tribunal had allowed Rs.75,000/- as lump sum compensation along with Rs.10,000/- for last rites.

The claim petition had been filed by the father, brother and the sister of the deceased. The Motor Vehicle Act does not lay down a separate criteria for a male or a female child. A question arises as to what is just and reasonable compensation. The death had taken place in 1998 and it was claimed that she was earning Rs.1,000/- per month but there was no evidence to support that. The material placed on the record only showed that she had a compartment in B.A. part one. It appears that she did not pursue the course further. The girl was not eligible to teach. At the most a guess work can be made and it can be taken that she could earn Rs.800/- per month in 1998. There is no evidence from the side of the claimants to show that the deceased was imparting tuitions to any child. Parents of the children taught by her had not been examined to assess the potential income of the deceased. The claimants have not been able to state what she was charging from each child and how many children she was giving tuitions. The prospects of getting government job were also not bright.

The question of grant of future prospects was dealt with at great length in [HDFC Ergo General Insurance Co. Ltd. v. Smt. Lalta Devi and Ors.](#), in MAC APP No. 189/ 2014, decided on 12.01.2015.

Relevant para 8 is extracted hereunder:

“8. It is no gainsaying that in appropriate cases some addition towards future prospects must be made in case of death or injury of a person pursuing a professional course. At the same time, it cannot be laid down as a uniform principle that every person pursuing professional course will have a bright future. There may be a student pursuing engineering from the reputed engineering colleges like Indian Institute of Technology (IIT), Regional Engineering College or any other reputed college. At the same time, a number of engineering Colleges have mushroomed where an engineering graduate may find it difficult to secure a job of an engineer. In the instant case, deceased Aditya, as stated earlier was a student of an unknown engineering college, i.e. MAC APP. 189/2014 & 640/2014 Page 4 of 25 Echelon Institute of Technology, Faridabad which is claimed to be affiliated to Maharshi Dayanand University, Rohtak. The Claimants have placed on record result-cum-detailed marks card of First and Second Semester. It may be noted that the deceased had secured just ordinary marks in seven subjects and he had to re-appear in papers 1002 (Mathematical-I), 1006 (Foundation of Computer & Programming) and 1008 (Basics of Mechanical Engineering). Similarly, in the Second Semester the deceased was absent in one of the 12 papers and out of 11 subjects for which he had taken examination, he was to re-appear in four subjects. Thus, it will be difficult to say that the deceased was a brilliant student or that he was pursuing engineering from a well known or even mediocre college.”

In the case [Reshma Kumari v. Madan Mohan](#) (2013) 9 SCC 65 the three Judge Bench of Supreme Court reiterated the view taken in *Sarla Verma v. DTC*, (2009) 6 SCC 121 to the effect that in respect of a person who was on a fixed salary without provision for annual increments or who was self-employed the actual income at the time of death should be taken into account for determining the loss of income unless there are extraordinary and exceptional circumstances.

Further, the divergence of opinion in [Reshma Kumari & Ors. v. Madan Mohan & Anr.](#), (2013) 9 SCC 65 and [Rajesh & Ors. v. Rajbir Singh & Ors.](#), (2013) 9 SCC 54 was noticed by the Supreme Court in another judgment in [National Insurance Company Ltd. v. Pushpa & Ors.](#), CC No.8058/2014, decided on 02.07.2014 and in concluding paragraph while making reference to the Larger Bench, it was observed as under:-

"Be it noted, though the decision in Reshma (supra) was rendered at earlier point of time, as is clear, the same has not been noticed in Rajesh (supra) and that is why divergent opinions have been expressed. We are of the considered opinion that as regards the manner of addition of income of future prospects there should be an authoritative pronouncement. Therefore, we think it appropriate to refer the matter to a larger Bench."

Para nos. 27 and 28 of ***Union of India and Anr. V. Raghubir Singh (dead) by Lrs. Etc. [(1989) 2 SCC 754]***, reproduced in para no.17 of ***Safiya Bee's*** case (supra) is relevant and is reproduced for ready reference:-

"27. What then should be the position in regard to the effect of the law pronounced by a Division Bench in relation to a case realizing the same point subsequently before a Division Bench of a smaller number of Judges? There is no constitutional or statutory prescription in the matter, and the point is governed entirely by the practice in India of the courts sanctified by repeated affirmation over a century of time. It cannot be doubted that in order to promote consistency and certainty in the law laid down by a superior Court, the ideal condition would be that the entire Court should sit in all cases to decide questions of law, and for that reason the Supreme Court of the United States does so. But having regard to the volume of work demanding the attention of the Court, it has been found necessary in India as a general rule of practice and convenience that the Court should sit in Divisions, each Division being constituted of Judges whose number may be determined by the exigencies of judicial need, by the nature of the case including any statutory mandate relative thereto, and by such other considerations which the Chief Justice, in whom such authority devolves by convention, may find most appropriate. It is in order to guard against the possibility of inconsistent decisions on points of law by different Division Benches that the rule has been evolved, in order to promote consistency and certainty in the development of the law and its contemporary status, that the statement of the law by a Division Bench is considered binding on a Division Bench of the same or lesser number of Judges. This principle has been followed in India by several generations of Judges. We may refer to a few of the recent cases on the point. In *John Martin v. State of West Bengal*, (1975) 3 SCC 836, a Division Bench of three Judges found it right to follow the law declared in *Haradhan Saha v. State of West Bengal*, (1975) 3 SCC 198, decided by a Division Bench of five Judges, in preference to *Bhut Nath Mate v. State of West Bengal*, (1974) 1 SCC 645 decided by a Division Bench of two Judges. Again in *Indira Nehru Gandhi v. Raj Narain*, 1975 Supp. SCC 1, Beg J held that the Constitution Bench of five Judges was bound by the Constitution Bench of thirteen Judges in *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225. In *Ganapati Sitaram Balvalkar v. Waman Shripad Mage*, (1981) 4 SCC 143, this Court expressly stated that the view taken on a point of law by a Division Bench of four Judges of this Court was binding on a Division Bench of three Judges of the Court. And in *Mattulal v. Radhe Lal*, (1974) 2 SCC 365, this Court specifically observed that where the view expressed by two different Division

Benches of this Court could not be reconciled, the pronouncement of a Division Bench of a larger number of Judges had to be preferred over the decision of a Division Bench of a smaller number of Judges. This Court also laid down in [Acharya Maharajshri Narandraprasadji Anandprasadji Maharaj v. State of Gujarat](#), (1975) 1 SCC 11 that even where the strength of two differing Division Benches consisted of the same number of Judges, it was not open to one Division Bench to decide the correctness or otherwise of the views of the other. The principle was reaffirmed in [Union of India v. Godfrey Philips India Ltd.](#), (1985) 4 SCC 369 which noted that a Division Bench of two Judges of this Court in [Jit Ram Shiv Kumar v. State of Haryana](#), (1981) 1 SCC 11 had differed from the view taken by an earlier Division Bench of two Judges in [Motilal Padampat Sugar Mills v. State of U.P.](#), (1979) 2 SCC 409 on the point whether the doctrine of promissory estoppel could be defeated by invoking the defence of executive necessity, and holding that to do so was wholly unacceptable reference was made to the well accepted and desirable practice of the later bench referring the case to a larger Bench when the learned Judges found that the situation called for such reference.

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

In [Central Board of Dawoodi Bohra Community and Anr. V. State of Maharashtra & Anr.](#) [(2005) 2 SCC 673], (para 12), a Constitution Bench of this Court summed up the legal position in the following terms :

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

(2) A Bench of lesser quorum cannot disagree or dissent from the view of the law taken by a Bench of larger quorum. In case of doubt all that the Bench of lesser quorum can do is to invite the attention of the Chief Justice and request for the matter being placed for hearing before a Bench of larger quorum than the Bench whose decision has come up for consideration. It will be open only for a Bench of co-equal strength to express an opinion doubting the correctness of the view taken by the

earlier Bench of co-equal strength, whereupon the matter may be placed for hearing before a Bench consisting of a quorum larger than the one which pronounced the decision laying down the law the correctness of which is doubted.

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

(i) The above said rules do not bind the discretion of the Chief Justice in whom vests the power of framing the roster and who can direct any particular matter to be placed for hearing before any particular Bench of any strength; and

(ii) In spite of the rules laid down hereinabove, if the matter has already come up for hearing before a Bench of larger quorum and that Bench itself feels that the view of the law taken by a Bench of lesser quorum, which view is in doubt, needs correction or reconsideration then by way of exception (and not as a rule) and for reasons given by it, it may proceed to hear the case and examine the correctness of the previous decision in question dispensing with the need of a specific reference or the order of Chief Justice constituting the Bench and such listing."

A Single Bench of Delhi High Court in '**Narinder Bishal And Anr. vs Sh. Rambir Singh and Ors.** decided on 20.2.2008, was of the view that future prospects cannot be taken unless there is cogent and convincing evidence and future prospects have no correlation to the price indexing or inflation. It has been held as under:-

"14. I, therefore, do not find any infirmity in the impugned award so far taking the monthly income of the deceased at Rs. 2,796/- as prevalent on the relevant date of the tragic accident by the Tribunal is considered. As regards the plea of the appellant to consider the revision of minimum wages of the deceased after taking into consideration such increase under the [Minimum Wages Act](#), which show such wages virtually becoming double after a gap of 10 years period. This contention of counsel for the appellant is repelled by counsel appearing for the respondent on the strength of the Apex Court's judgment reported in Bijoy Kumar Dugar's case (Supra) that in the absence of any evidence regarding future prospects, the future

prospects cannot be taken into consideration. In most of the recent appeals, this controversy has become a bone of contention between the claimants as well as the insurance companies. In Bijoy Kumar Dugar's case (Supra), the Apex Court was dealing with the case of a student, science graduate, pursuing his law studies and who at the relevant time was earning a sum of Rs. 4,000/- per month as an attorney holder of some petrol pump and in the said case, the contention was raised that the deceased would have earned minimum wages of Rs. 8,000/- or Rs. 10,000/- per month, if not, more, had he not died in the accident. No evidence was adduced by the claimants in the said case to prove how the deceased would have earned the said income of Rs. 8,000/- to Rs. 10,000/- per month. In the backdrop of facts of the said case, the Supreme Court held that the bald assertion of the claimants that the deceased would have earned Rs. 8,000/- to Rs. 10,000/- per month in the span of his life time had he not met with the accident cannot be accepted as his legitimate income unless the facts are proved by leading cogent and reliable evidence before the MACT. It would be relevant to refer to the observations of the Supreme Court in the said judgment, which are reproduced as under:

8. The mere assertion of the claimants that the deceased would have earned more than Rs. 8000 to Rs. 10,000 per month in the span of his lifetime cannot be accepted as legitimate income unless all the relevant facts are proved by leading cogent and reliable evidence before MACT. The

claimants have to prove that the deceased was in a trade where he would have earned more from time to time or that he had special merits or qualifications or opportunities which would have led to an improvement in his income. There is no evidence produced on record by the claimants regarding future prospects of increase of income in the course of employment or business or profession, as the case may be.

15. In the above judgment, the Supreme Court has also considered the case of [General Manager, Kerala Transport Road Corporation v. Susamma Thomas](#) , wherein the claimants had satisfactorily proved on record the prospects of the deceased concerning his advancement in his future career therefore, taking into consideration the said aspect of future career, the Court had made highest estimate of his income and then granted the relief to the claimants. The Apex Court has also considered in the aforesaid judgment, the celebrated judgment of [Sarla Dixit v. Balwant Yadav and Ors.](#) reported in 1996 (III) AD 13 (SC) in which also enough evidence was led with regard to the future prospects of the deceased. After considering the above said cases, the Hon'ble Supreme Court in [Bijoy Kumar Dugar's](#) case observed that no evidence was led by the claimants to prove the future prospects regarding increase of income in the course of his employment or business or profession, therefore, the aspect of future prospects could not be considered. The legal position after the judgment of [Bijoy Kumar Dugar's](#) case thus emerges that where the claimants are

able to establish and sufficiently prove the future prospects of the deceased in the course of his employment or business or profession the criteria as laid down in Sarla Dixit's case can be made applicable as in the said criteria, there is an in built mechanism of taking into account the future prospects of the deceased, while in other cases in the absence of any evidence, the said criteria of Sarla Dixit's case cannot be adhered to and a normal method of calculating the income of the deceased with an appropriate multiplier after deducting the personal expenses out of the total income to assess the exact loss of dependancy can be arrived at. For determining the earning of the deceased or victim of the accident, the claimants are supposed to prove the exact income of the deceased by leading some cogent and reliable documentary evidence as to the nature of his employment or trade or business or in any other activity he was involved in and then the said income can be taken into consideration for determining the quantum of compensation and if in such a case, the claimants are further able to establish the future prospects as well, then the criteria laid down in Sarla Dixit's case would get attracted. There can be another category of cases where the claimants are able to establish the future prospects of the deceased by quantifying the amount to be earned by the deceased in future with the help of cogent, reliable and convincing evidence and in all such cases the tribunal can take into consideration such future increase as has been

established by the claimants on record. The difficulty however, would arise in all those cases where although the claimants are able to sufficiently establish on record the educational qualification of the deceased or the nature of his employment whether skilled, semi-skilled or unskilled but fail to establish by any reliable evidence to prove the exact income of the deceased. In such cases, question arises whether the Tribunal can take into consideration the minimum wages and the periodical revision of minimum wages as are fixed by the Government under the [Minimum Wages Act](#). To examine this question, it will have to be considered whether the revision which takes place under the [Minimum Wages Act](#) can be equated with the future prospects of a deceased. As would be evident from catena of judgments of the Supreme Court, the future prospects have no correlation with the price index, inflation or denunciation of currency value.

There are no exceptional or extraordinary circumstances in the case and I do not propose to make any addition for future prospects. The matter has been referred to the Larger Bench and it would not be possible for the insurance company to make recoveries if the later view is accepted.

The next question to be considered by this Court is about the multiplier applicable in this case. The submission made by learned counsel for the appellants that multiplier has to be according to the age of the deceased as referred to in the *IIInd Schedule* as well in view of the

latest decision of the Supreme Court in *Munna Lal Jain Vs. Vipin Kumar Sharma, 2015 (6) Scale 522*, is liable to be rejected in view of the decision of Supreme Court in *UPSRTC Vs. Trilok Chand (1996) 4 SCC 362*. The logic of taking the age of the deceased or the claimant as laid down in *General Manager, Kerala State Road Transport Corporation Vs. Susamma Thomas 1994(2) SCC 176* and Trilok Chandara was not brought to the notice of the Supreme Court in *Munna Lal Jain & Anr.* (supra). Otherwise also, in view of the judgment in *Safiya Bee v. Mohd. Vajahath Hussain @ Fasi, (2011) 2 SCC 94* and *Union of India and Ors. v. S.K. Kapoor, (2011) 4 SCC 589*, the law laid down in *U.P. SRTC v. Trilok Chandara, (1996) 4 SCC 362* shall be taken as binding precedent.

In view of the above, the age of the father has to be considered for selection of multiplier. The age of the father is not available. The age of the mother was 43 years. Therefore, it can be taken that Ramesh would be over 45 years and the multiplier applicable would be 13.

Taking into account that the deceased was unmarried, there has to be a deduction of 50% of the income. The income available for calculations would be Rs.400/- per month. After applying the multiplier of 13, the compensation would work out as $400 \times 12 \times 13 = \text{Rs.}62,400/-$. The Tribunal had already awarded Rs.10,000/- for last rites. I would add Rs.10,000/- towards loss of estate and Rs.25,000/- to each of the claimants for loss of love and affection, which makes the total to be Rs.1,47,400/-. The Tribunal had awarded Rs.75,000/-. It would be

deducted and the remaining amount of Rs.72,400/- would be payable to the appellants with interest at the same rate as awarded by the Tribunal from the date of filing of the appeal i.e. 13.12.2001 till realization. The amount shall be paid jointly and severally.

Both the appeals are partly allowed.

(ANITA CHAUDHRY)
JUDGE

January 31, 2017
sunil

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No