

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

**FAO No. 1020 of 1993 (O&M)
Date of Decision: July 21, 2017**

Ram Sarup (through LRs)

..Appellant(s)

Versus

Raj Kumar and others

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. R.S. Longia, Advocate
for the appellant.

Mr. Ravinder Arora, Advocate and
Mr. R.M. Suri, Advocate
for the insurance company.

ANITA CHAUDHRY, J.

This is the claimant's appeal seeking enhancement in the award dated 26.03.1993, passed by the Motor Accident Claims Tribunal, Karnal.

The record of this file had been burnt in the fire accident which had taken place in the year 2011. Only the copy of the award could be reconstructed. None of the parties could give any material for reconstruction of the record. The counsels appearing for the parties agreed that the matter can be decided on the basis of whatever is available on the record.

A petition was filed under Section 166 of the Motor Vehicle Act seeking compensation for the death of Suraj Bhan son of claimant. The deceased was 22 years old. He was unmarried. The accident had taken place in the intervening night of 28/29.08.1990 at about 2:30 AM. A truck was parked on the G.T. Road without lights. The deceased was travelling in the Maruti Van which struck against the stationary truck.

The Tribunal took the income of the deceased to be Rs.1,000/- and made a deduction of 50%. Since the claimant was 60 years old, multiplier of 8 was applied and the compensation was calculated as Rs.48,000/-. Rs.2,000/- was allowed for conveyance and treatment. An award of Rs.50,000/- was passed and the liability was placed upon respondents no.1, 3 & 5.

The submission on behalf of the appellant was that the multiplier should have been taking the age of the deceased into consideration and the Tribunal had failed to make an addition towards future prospects and no amount had been allowed for funeral expenses, loss of estate and loss of love and affection.

The submission on behalf of National Insurance Company is that there can be no addition towards future prospects as the income of a labourer has been taken and the matter is under consideration with the Larger Bench of this Court.

The accident had taken place in 1990. The income was rightly taken as Rs.1,000/- considering the minimum wages existing in that year.

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 v. Mohd. Vajahath*

Hussain @ Fasi, (2011) 2 SCC 94 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, held that future prospects cannot be added unless there is cogent and convincing evidence and that future prospects had no correlation to the price indexing or inflation.

There are no exceptional or extraordinary circumstances in the case and I do not propose to make any addition

for future prospects, even there is no evidence. The matter has been referred to the Larger Bench and it would not be possible for the insurance company to make recoveries.

The next question to be considered is the multiplier. 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 ***Safiya Bee's*** case (supra) 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.

Taking the income to be Rs.1,000/- per month and making a deduction of 50%, the amount available would be Rs.500/- and the multiplier applicable would be 9 and the compensation would be $\text{Rs.500} \times 12 \times 9 = \text{Rs.54,000/-}$. To this a sum of Rs.5,000/- should be added as funeral expenses, Rs.10,000/- is added as loss of estate, Rs.1,000/- is added for transportation and

a sum of Rs.25,000/- is added for loss of love and affection for the claimant. The total of this comes to Rs.95,000/-. The Tribunal had awarded Rs.50,000/-, which would be deducted and the remaining amount would be payable with interest @ 6% from July 1993 till realization. The award is modified.

The appeal is partly allowed.

July 21, 2017
sunil

(ANITA CHAUDHRY)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No