

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

**FAO No.9 of 1996 (O&M)
Date of Decision: May 11, 2017**

Veenta Sewa Ram and another

..Appellant(s)

Versus

General Manager, Chandigarh Transport Undertaking and others

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Deepak Thapar, Advocate
for the appellants.

Mr. Vinod gupta, Advocate
for respondent no.4-insurance company.

ANITA CHAUDHRY, J.

This is the claimants' appeal seeking enhancement in the award dated 24.02.1995, passed by the Motor Accident Claims Tribunal, Patiala.

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.

Deepak Sewa Ram was an Assistant Executive Engineer with HSEB. He died in an accident on 21.07.1987. In the claim petition

it was pleaded that he was 39 years old but when the widow stepped into the witness box she gave his age as 35. The Tribunal on the basis of the material produced found that the deceased was getting Rs.6,000/- per month and took the contribution to the family as Rs.4,700/-. Multiplier of 13 was applied and compensation of Rs.7,33,200/- was calculated.

The submission on behalf of the appellants is that no addition towards future prospects had been made and as per the law laid down in ***Vimal Kanwar and others Vs. Kishore Dan and others 2013(2) RCR (Civil) 945*** and an addition of 100% in the salary should be made and the income should be taken as Rs.12,000/- per month and a deduction of 1/3rd should be made and the amount be calculated using the multiplier of 16 as the deceased was 35 years old.

The submission on the other hand is that the addition towards future prospects was dealt with by Apex Court in ***Sarla Verma Vs. Delhi Transport Corporation, 2009(3) RCR (Civil) 77*** and has not been over ruled.

It would be necessary to notice the observation made in ***Union of India and Anr. V. Raghbir 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*** and 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."

In view of the observations made in para no.28 above the proposition of law rendered in Sarla Verma's case (supra) would apply.

In view of the above, only an addition of 50% towards future prospects should be made. If the income is taken as Rs.6,000/- per month, the addition would be Rs.3,000/- per month. The claimants are the widow and the mother. It is not clear from the title as to whether the father of the deceased was alive. It appears that purposely that fact has not been disclosed. There is no material available to show that the father of the deceased had died. Therefore, the mother was not dependent. The deduction should be half instead of $\frac{1}{3}^{\text{rd}}$ and the compensation would be Rs.4,500/- x 12 x 15 = Rs.8,10,000/-. To this a sum of Rs.15,000/- should be added for loss of consortium, Rs.5,000/- is added as funeral expenses, Rs.10,000/- is added for loss of estate and Rs.15,000/- is added on account of loss of love and affection for the mother. The total of this comes to

Rs.8,55,000/-. The Tribunal had awarded Rs.7,33,200/-, which would be deducted and the remaining amount payable is Rs.1,21,800/- with interest @ 6% from January 1996 by respondents no.1 to 3 jointly and severally.

The appeal is partly allowed.

(ANITA CHAUDHRY)
JUDGE

May 11, 2017
sunil

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No