IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.81 of 1997 (O&M)
Date of Decision: May 17, 2017

Kamaljit Kaur ..Appellant(s)

Versus

Harinder Singh ...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Gaurav Mohunta, Advocate
for the appellant.

Mr. Vinod Kanwal, Advocate
for respondent no.1.

Mr. Gaurav tangri, Advocate
for respondent no.1.

Mr. Neeraj Khanna, Advocate for
Mr. Ravinder Arora, Advocate
for respondent no.3.

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ANITA CHAUDHRY, J.

This is the claimants appeal seeking enhancement of the award dated 01.10.1996, passed by the Motor Accident Claims Tribunal, Kurukshetra.

The Lower Court record was burnt in a fire in 2011. The parties were asked to place on record documents for re-construction. The appellants have placed on record the complete pleadings and the evidence, insurance policy etc. The counsels appearing for the parties agreed that the matter can be decided on the basis of whatever is available.

Amarjit was 46 years old. He was a Government Contractor. He was going to Chandigarh in a Maruti Car bearing registration number CH-01-4006, which was driven by Bhim Sain. Another Maruti Car bearing registration no.DL/3C-5770 came from Ambala side, which was trying to overtake a light commercial truck, which was moving very slowly ahead of the car. While it was in the process of overtaking respondent no.1 lost control and struck against the car driven by Bhim Sain and the car then struck against the light commercial vehicle. It was pleaded that the accident had taken place on account of negligence of respondent no.1 as well as Bhim Sain driver of car bearing registration No.CH-01-4006.

Two claim petitions were filed, one on behalf of the legal heirs of Amarjit and the other by Bhim Sain for his injuries. The owner and driver of both the cars were arrayed as party. The car bearing the Delhi registration number was not insured. The car driven by Bhim Sain bearing the Chandigarh number was insured with United India Insurance Company. Both the claim petitions were consolidated and the Tribunal held that the accident occurred on account of negligence of the car driven by Harinder Singh i.e. respondent no.1, which was not insured.

On the quantum, the Tribunal disbelieved the statement of Kamaljit Kaur and her brother-in-law Upinderjit Singh observing that statements were nothing but falsehood and there was no evidence to show that the deceased was contributing Rs.70,000/- per month to meet the house-hold expenses. There was no evidence to show that they had taken any loan or they owned any plot. There was no evidence to show that he had any account in any bank or post office or any fixed deposit in the name of the children and therefore, for the wife to say that she had taken loan from financers was absolutely wrong and difficult to accept that statement. The Tribunal found that the deceased was 45 years old and no evidence in the shape of documentary evidence like the ITR or other material was produced, therefore, making a guess work, the income was taken as Rs.1,500/- per month and Rs.1,000/- was taken as contribution to the family and applying the multiplier of 16, the compensation was calculated as Rs.1,82,000/-, which was to be paid by respondent no.1, the owner and the driver of the car.

The submission made on behalf of the appellant was that it was a case of composite negligence and the liability should have been placed upon both the drivers. It was urged that the Tribunal had wrongly assumed the income to be Rs.1,500/- per month whereas they had placed on record a certificate to show that a sum of Rs.72,000/- was paid to Amarjit Singh in the year 1992-93 and he was the Managing Director of the Company. The counsel had also referred to the resolution Ex.A-5 and the document placed at page no.68 of the documents filed by them, which does not bear any exhibit. The counsel had submitted that this certificate would show that the total income was increasing every year and this return is signed by Amarjit Singh. It was urged that in Annexure A-10 the amount paid by PWD to the concern is shown and Amarjit was partner, a sum of Rs.2,80,810/- was paid and Rs.6,290/- was deducted as tax and the Tribunal has ignored all these documents. It was urged that the deceased had been allotted a number of contracts and the wife had written a letter surrendering all the contracts as after the death of her husband, she was unable to fulfill the agreements The counsel had referred to Annexure A-6.

On the other hand it was urged that the Tribunal had dealt in detail all the evidence led by the claimants and in the claim petition it is only mentioned that Amarjit Singh was a Manager and the firm was of their father namely Kishan Singh who was the Managing Director and the certificate Annexure A-4 is signed by her own Chartered Accountant. It was urged that the claimants had not placed on record the income tax returns or the balance sheets and it was to be shown that the deceased was a partner in the concern and what was his share. It was urged that whatever contracts had been allotted that were to the firm and resolution Ex.A-5 has not been proved as the original resolution book was not produced.

Coming to the income aspect first, the Tribunal had dealt with the statement made by Kamaljit Kaur and her brother-in-law Upinderjit. It has come in evidence that Amarjit Sigh had done his LLB (thought no certificate filed) but had no degree or technical knowledge about construction of bridges. It had noted that the minutes book was not produced on record. The Tribunal had rejected a photocopy of the resolution and had observed as under:-

> *"The bare perusal of the evidence of AW2 Kamaljit Kaur and her brother in law Upinderjeet Singh AW3 as reproduced almost in its entirety in the earlier part of this award will leave no one in doubt that both these witnesses have deposed nothing but falsehood. It cannot be accepted that the deceased was contributing a sum of Rs.70,000/- per month to meet the household expenses, as has been argued by the learned counsel for the claimants on the basis of evidence of AW2 Kamaljit Kaur that the deceased had been giving a sum of Rs.70,000/- per month to meet the household expenses for the post about 15/16 years prior to his death especially when AW2 Kamaljit Kaur had categorically deposed in her cross-examination that she had not kept any account of the sum of Rs.70,000/- which her husband used to hand over to her every month to meet the household expenses and that neither she nor her husband owned any agriculture land, house or plot or any amount in any bank, post office or in fixed deposit in her name or in the name of her children. Further more, the evidence of AW2 Kamaljit Kaur in examination-in-chief to the effect that she could not save any amount out of Rs.70,000/- per month, cannot be accepted by any court of law especially when there is neither any income tax returns nor any evidence on record to show that the deceased was earning any amount out of which he could spare a sum of Rs.70,000/- per month for the past about 15/16 years for payment to his wife to meet the household expenses. This on the face of it is unacceptable, especially when Kamaljit Kaur in her examination in chief has*

categorically deposed that she has no source of income at all and that she is meeting the education need of her daughter Mandeep Kaur by taking loans from financers on interest at the rate of 18% per annum. This statement of AW2 Kamaljit Kaur cannot be accepted because in her cross-examination, she had categorically deposed that she was unable to disclosed the names of the financers from whom she had taken loans at the rate of 18% per annum interest to continue the studies of her daughter Mandeep Kaur. Further more, the evidence of AW2 Kamaljit Kaur that her husband was having four contracts in hand at the time of his accidental death, again does not inspire any confidence, because in her cross examination, she categorically deposed that she was not in the knowledge of exact details, nor she is in possession of any letter or document received from the government agencies regarding the alleged four contracts, which were in hand at the time of the death of her husband. Further more, her evidence that she had written letters like the letter Ex.A6 to all the four concerned government officers has to be rejected being unworthy of reliance, because she has categorically deposed at a later stage that she is not in possession of any copy of those letters. Further more, her evidence that her husband had been filing income tax returns has to be rejected because at a later stage, she categorically deposed that she was not in possession of any documentary evidence in this regard. Further more, her evidence that in all Kishan Singh and company comprised of four directors has to be ignored, because at a later stage, she categorically deposed that evidence regarding Kishan Singh and company etc. as given by *her was not mentioned in the claim application, being beyond pleadings. Further more, her evidence that Kishan Singh and company is registered in Himanchal Pradesh does not inspire any confidence, because the same has not been proved by any legal evidence. So far as the evidence of AW3 Upinderjeet Singh is concerned, from the bare perusal of his evidence, which has been reproduced almost in its entirety in the earlier part of this award, it becomes absolutely clear that he is real brother of the deceased and that he has no respect to speak the truth, because if the deceased was having four contracts as deposed by this witness, then his evidence to the effect that Kamaljit Kaur getting any amount from the company or as a matter of fact she never got any amount from the company after the death of Amarjeet Singh, is unacceptable and unbelievable. It cannot be imagined that everything vanished immediately after the death of Amarjeet Singh. Further more, his evidence that his late brother Amarjeet Singh was getting a monthly salary of Rs.6,000/- besides conveyance allowance of Rs.2,000/- etc. is contradictory to the evidence of his Bhabhi namely AW2 Kamaljit Kaur, who deposed that the deceased was contributing Rs.70,000/- per month to meet the household expenses for the past about 15/16 years. Further more, the existence of so called company with the name of Kishan Singh and company is very much in doubt, because as per evidence of AW3 Upinderjeet Singh, after the death of his brother Amarjeet Singh only one contract remained as operational and as such the company has virtually came to an end, as deposed by him. This has to be viewed in the context of his* *evidence, when he deposed in cross examination that he has not brought any account books of Kishan Singh and company in the court and was unable to depose as to what were the gains and losses of the company during the respective financial years and that his late brother Amarjeet Singh was simply B.Sc., LL.B. And as per evidence of AW3 Upinderjeet Singh, the deceased amarjeet Singh had no degree to show that he was having any knowledge of bridge construction or technical knowledge. Further more evidence of this witness cannot be accepted because he has categorically deposed that the company used to get all sorts of payments from the government departments by means of account payee cheques, but he has not brought any document in Court to show in which bank account, those cheques issued by the functionaries of the State Governments used to deposited either at Chandigarh or at Simla etc. Furthermore, no reliance can be placed upon the resolution Ex.A5, because this witness has categorically deposed that he had not brought any documentary evidence including the minutes book toshow that the resolution copy of which is Ex.A5 was ever passed by the board of directors of M/s Kishan Singh and company and that he had not brought any evidence in court concerning Kishan Singh and company. Further more, it is unbelievable and unimaginable to accept his evidence that he does not know any details of any of his bank account either at Chandigarh or at any place in Himachal Pradesh. Further more, the evidence of this witness that winding up applications were filed with the Registrar of Companies Jallandhar Cantt. (Punjab) has to be*

> *rejected being unworthy of reliance in view of his clear cut deposition at a later stage that he was not in possession of any record to show that any application was moved after the death of Amarjeet Singh for winding up the contracts and that he does not know when the application in this regard was filed. It cannot be lost sight that as per his evidence, he resided in the same house in which the deceased used to reside. Furthermore, if the contracts had been in existence and if the so called company has been in existence and if the so called company has been in existence, then his evidence to the effect that he had not written any letter to any government authority in Himanchal Pradesh in respect of four contracts, which were in operation at the time of the death of Amarjeet Singh, though he was one of the directors of the company with his brother, cannot be accepted being worthy of reliance."*

There was absolutely no evidence from which it could be shown that Amarjit was a partner or a contractor in the firm in the claim petition it was stated that he was a government contractor but the claimants had failed to lead any evidence to show that any contract had been awarded to him or that he was getting a share in the profits. The income-tax returns were not produced. If he had been employed as a Manager, the records could have been produced to show the salary he was paid. The certificate which had been produced was rightly rejected as it is their own Chartered Accountant who had signed it without any supporting material. The Tribunal had rightly taken the income to be Rs.1,500/- per month.

The submission on behalf of the appellant then was that an addition towards future prospects should have been made and no amount had been awarded for funeral expenses, for loss of consortium and for loss of love and affection for the children.

The argument on behalf of respondent no.3 was that if the income is taken on notional basis or that of a workman then there would be no addition towards future prospects.

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],(para12), 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.

An argument was sought to be made that it was a case of composite negligence and the claimant could recover the amount from either of the joint tort feasors. Reliance was placed upon ***Khenyei Vs. New India Assurance Co. Ltd. & Ors. 2015(4) SCC (Civil) 532***.

The submission of the other side with respect to this plea was that there was no plea that the accident had occurred on account of negligence of both the vehicles and resultantly no issue was framed nor there is any evidence and the appellants cannot take a new plea at the appellate stage.

It is no doubt true when both the joint tort feasors have been impleaded and there are pleadings then the Tribunal can determine inter se extent of composite negligence of the drivers and apportion the amount to the extent of their negligence. The plea of contributory negligence and composite negligence are different as in the case of contributory negligence a person who has himself contributed to the accident cannot claim compensation for the injuries or for the death whereas in the case of composite negligence the person who has suffered has not contributed to the accident but the outcome of the combination of negligence of two or more persons.

In the present case, the plea raised by the claimant was that the accident had occurred solely on account of negligence of respondent no.1 who was coming from the opposite direction. For the appellants to now claim that it was a case of composite negligence cannot be accepted. The reasons for this change is obvious, the car driven was not insured.

Reverting back to the computation of compensation, the compensation will have to be calculated again as the Tribunal had applied a wrong multiplier. The deceased was 45 years old and therefore, the multiplier of 14 would be applicable instead of 16. Taking the income to be Rs.1,500/- per month in 1994 and making a deduction of 1/3rd, the contribution to the family would be Rs.1,000/- per month and the compensation would be Rs.1,000/- x 12 x 14 = Rs.1,68,000/-. The Tribunal had failed to give any amount for loss of consortium or for loss of love and affection for the children. I would add Rs.25,000/- for loss of consortium, Rs.5,000/- for funeral expenses and Rs.25,000/- for loss of love and affection for the child, which raises the total to Rs.2,23,000/-. The Tribunal had awarded Rs.1,92,000/- and the amount payable would be Rs.31,000/-. This amount would be payable by respondents no.1 & 2 jointly and severally.

The appeal is partly allowed.

(ANITA CHAUDHRY)
JUDGE

May 17, 2017
sunil

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No