

In the High Court of Punjab and Haryana at Chandigarh

**F.A.O No. 1846 of 1999
Date of Decision: 14.2.2017**

Chander Bhan and anotherAppellants

Versus

Naresh Kumar and othersRespondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. K.S.Panwar, Advocate
for the appellants.

Ms. Madhu Sharma, Advocate
for respondent No. 3.

ANITA CHAUDHRY, J

This is the claimants appeal seeking enhancement of the compensation awarded to them by the Motor Accident Claims Tribunal, Karnal vide award dated 4.3.1999.

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. The counsels appearing for the parties agreed that the matter can be decided on the basis of the award.

Briefly narrating the facts, Jai Kailash who was 21 years old, unmarried, died on 22.4.1992 in a vehicular accident. The truck driven by respondent No. 1 hit him at 7.30 P.M. and snuffed his life. The driver had reversed the truck and hit the cot on which Jai Kailash was sleeping. The claimants were his parents who had pleaded that Jai Kailash used to earn his livelihood by plying a mule cart and used to earn Rs. 9,000/- per month. He used to carry bricks on his mule cart.

It is necessary to notice here that respondent No. 1 and 2 were

proceeded *ex parte*. The claim petition was contested only by the insurance company and award was passed against the owner and the driver of the truck. Thereafter, an application was filed for setting aside the *ex parte* award which was set aside and the claim petition was decided. The Tribunal recorded a finding that there was no evidence that the deceased was earning Rs. 9,000/- per month. It noted that he was illiterate and he was only carrying bricks on his mule cart and the claim was exaggerated and took his income to be that of a labourer and took the minimum wages of Rs. 1500/- per month and his annual income was taken as Rs. 18,000/-. The deceased was a bachelor and since the claimants were the parents, therefore 1/3rd was deducted as personal expenses and the income was taken as Rs. 12,000/- per annum. It was noted that in 4-5 years the deceased would have got married and therefore a sum of Rs. 60,000/- was assessed for five years and for the remaining 11 years the loss of dependency was taken to be Rs. 6,000/- per annum and the total loss was taken to be Rs. 60,000/- + 66,000/- = Rs. 1,26,000/-. A sum of Rs. 4,000/- was added for the last rites raising the total to Rs. 1,30,000/-.

Counsel for the appellants has urged that the deceased was unmarried and was only 21 years old and the income was taken on the lower side and as per Haryana Government Gazette notification of 2015 for every 1,000 bricks loaded in a kiln, Rs. 194.87 is paid even when it is loaded on a donkey and they had pleaded that the deceased was earning Rs. 300/- per day and they had examined PW-4 who had stated that the deceased was working on contract basis on the same brick kiln and he was earning Rs. 300/- per day and a ledger was maintained. It was urged that the income should have been taken at Rs. 9,000/- per month and multiplier of 18 should

have been applied and they were entitled to increase in the amount allowed for loss of love and affection and addition should have been made for future prospects.

The submission on the other hand was that the matter regarding future prospect is pending before the Apex Court and three Judges Bench had taken a view that the person on fixed income or a labourer would not be entitled to any increase towards future prospects. It was urged that the minimum wages in that year were much less and no ledger had been produced and it was an oral statement. It was urged that the age of the claimants had to be taken for application of the multiplier.

In the case *Reshma Kumari v. Madan Mohan* (2013) 9 SCC 65 the three Judge Bench of Supreme Court had 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 *National Insurance Company Ltd. v. Pushpa & Ors.*, CC No. 8058/2014, decided on 02.07.2014 and the 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 another versus 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*** are relevant and are 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 realising 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 and 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 abovesaid 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."

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 later.

The next question to be considered is the multiplier applicable in this case. The submission made by learned counsel for the appellants was that the 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 ***Munnal 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 Chandra (1996) 4 SCC 362*** which shall be a binding precedent. 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*** (supra), 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'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 a binding precedent.

The minimum wages in Haryana in 1992 were Rs. 1,000/- per month. For the skilled labourer it was little higher. The Tribunal had taken the minimum wages as Rs. 1500/- per month. There is no appeal by the insurance company. Therefore, I would not make any changes. The Tribunal had deducted 1/3rd towards personal expenses. Since the deceased was a bachelor, the deduction should have been 50%. The calculation will have to be made all over again. Taking the income to be Rs. 1500/- per month and after deducting 50%, the contribution to the family would be Rs. 750/- per month and the multiplier would be 14 which is purely on guess work as the file had been burnt and the age of the parents is not reflected in the title sheet. Since the deceased was 21 years old, the parents can be taken to be in the age group of 40s. The compensation then would work out to Rs. 750 x 12 x 14 = Rs. 1,26,000/-. Some additions need to be made on the miscellaneous heads. I would add Rs. 6,000/- more for the last rites, Rs. 25,000/- for loss of love and affection only to the mother. The total of this would come to Rs. 1,57,000/-. The Tribunal had awarded Rs. 1,30,000/- which would be deducted and the remaining amount would be paid with interest @ 6% from the date of filing of the appeal i.e. 26.6.1999 till realization.

The appeal is partly allowed.

(ANITA CHAUDHRY)
JUDGE

February 14, 2017
Gurpreet

Whether speaking/reasoned : Yes
Whether reportable : No