

**In the High Court of Punjab and Haryana at Chandigarh**

**CM-5618-CII-2001 IN/AND**

**F.A.O No. 3657 of 1999**

**Date of Decision: 06.3.2017**

Maya Devi and another

.....Appellants

Versus

Chander Pal and others

.....Respondents

**CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY**

Present: Mr. Ashit Malik, Advocate  
for the appellants.

Mr. Rajesh Gupta, Advocate  
for respondent No. 1.

Mr. Puneet Jindal, Senior Advocate with  
Ms. Neha Jain, Advocate  
for respondents No. 2 and 3/ cross-objectors.

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**ANITA CHAUDHRY, J**

Claimants have preferred this appeal seeking enhancement of the award passed by the Motor Accident Claims Tribunal, Karnal vide award dated 22.7.1999.

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. Claimants have today placed on record the pleadings, copy of the FIR and some statements for reconstruction of the record. The counsels appearing for the parties agreed that the matter can be decided on the basis of the award and other available material.

A vehicular accident occurred on 23.10.1998, Des Raj 20 years

old, died on the next day i.e. 24.10.1998. A claim petition was preferred by the parents. Des Raj was unmarried and was stated to be running a karyana shop and earning Rs. 5,000/- per month. The Tribunal gave a finding that the claimants could not prove that the deceased was running a karyana shop. It noted that no sale tax number had been taken and there was no record to show that any records were being maintained or any investment had been made and took the income to be Rs. 1800/- per month and considering the age of the parents, applied the multiplier of 11 to calculate the loss at Rs. 1,32,000/-. A sum of Rs. 8,000/- was added for transportation and Rs. 5,000/- for funeral and last rites raising the total to Rs. 1,45,000/-, it was allowed with interest @ 12% from the date of filing of the petition.

Counsel for the appellants has urged that there was sufficient material with respect to the income and the higher income should have been taken for the purposes of calculation. It was urged that some additions towards future prospects should have been made and the multiplier should be applied taking the age of the deceased into account. It was urged that the amount for the funeral expenses was on the lower side and some amount should have been awarded for loss of love and affection.

The submission on the other hand was that since minimum wages were taken, therefore, no addition towards future prospects should be made and since the deceased was unmarried, the multiplier as per the age of the parents was rightly taken. It was urged that they have preferred cross-objections disputing their liability as the accident occurred in the middle of the road and the driver had stepped into the witness box to give an account of the accident and something had struck against the rear portion of the truck and the fault was entirely on the part of the deceased and they should

not be burdened with the payment.

So far as the negligence is concerned, the driver had come up with a new plea which did not find reference in the FIR or in the claim petition. The Trial Court exhaustively dealt with the issue and has referred to the site plan which indicated the site of the accident which belied the version given by the driver. A categoric finding was recorded that it was the truck driver who came on the *kacha* portion and caused the accident. There is no reason to upset the findings recorded by the Tribunal and are affirmed.

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.

Some addition needs to be made on some heads. Only a sum of Rs. 5,000/- was allowed for funeral expenses. I would add Rs. 20,000/- for funeral expenses and considering that the death had taken place in 1998, an addition of Rs. 25,000/- is made for loss of love and affection raising the total to Rs. 45,000/-. The award is modified. The appellants would be entitled to this amount with interest @ 6% from the year 2000 onwards till realization.

The appeal is partly allowed and the application for filing cross-objections is dismissed.

**(ANITA CHAUDHRY)**  
**JUDGE**

**March 06, 2017**  
Gurpreet

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| <b>Whether speaking/reasoned</b> | <b>:</b> | <b>Yes</b> |
| <b>Whether reportable</b>        | <b>:</b> | <b>No</b>  |