

In the High Court of Punjab and Haryana at Chandigarh

**XOBJC-I-C-II-2004 IN/AND
F.A.O No. 176 of 2001 (O&M)
Date of Decision: 20.7.2017**

Shanti Devi and others

.....Appellants

Versus

Ramesh and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

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

Mr. Paul S. Saini, Advocate
for the insurance company.

ANITA CHAUDHRY, J

The claimants have filed this appeal whereas the cross-objections have been filed by the insurance company against the award dated 1.9.1999 passed by the Motor Accident Claims Tribunal, Karnal.

The record of this file along with the cross-objections had been burnt in the fire accident which had taken place in the year 2011. Counsel for the parties have placed on record copy of the cross objections as well as copy of the award. The counsel appearing for both the parties stated that the matter can be decided on the basis of the material available.

Counsel for the appellants-claimants urges that a petition under Section 166 of the Motor Vehicles Act had been filed for the death of Chand Singh. He was the son of appellants No. 1 and 2 and brother of the

remaining three appellants. He was unmarried. Counsel submits that Roop Singh PW-1 had stated that the deceased was getting a salary of Rs. 3298.25 and 1/3rd deduction was made and the multiplier of 11 was applied which should have been 16 considering the age of the deceased. The counsel further submits that no addition towards future prospects has been made. Counsel refers to ***Munna Lal Jain and another versus Vipin Kumar Sharma and others 2015(3) SCC (Civil) 315*** and ***Chikkamma and another versus Parvathamma and another 2017 AIR (SC) 1732***. The counsel further urges that the Tribunal had failed to award any amount for love and affection and for funeral expenses.

The counsel appearing for the cross-objectors/insurance company urges that a perusal of the certificate placed before the Court would show that the basic salary of the deceased was mentioned as Rs. 2266.85 and they have added up the amount, which should have been deducted, as it was for ESI, EPF and loans. The counsel has placed on record the monthly pay slip of a number of employees and urges that Chand Singh was getting basic salary of Rs. 2266.85 and Rs. 15/- was added as HRA and the amount paid after deductions were only Rs. 1778.95. The counsel submits that no addition towards future prospects can be made as the matter is pending before the Apex Court and the multiplier would be considering the age of the parents and when the deceased was found to be 35 years old then the parents would be over 50 years. The counsel further urges that the multiplier was correctly applied. Referring to the cross objections, the counsel urges that the driver did not have a valid licence and they had submitted the report before the Court which was not considered.

Chand Singh was stated to be 32 years old but in the

post-mortem report his age was mentioned as 35 years. The claim petition had been filed by his parents and three minor brothers who were not dependant upon the deceased. Chand Singh was unmarried and, therefore, the deduction of 50% had to be made. The total salary paid to Chand Singh for May 1998 was Rs. 2281.85.

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.

No addition towards future prospects can be made and the

considering the age of the parents in the age group of 51 to 55. Taking the income of the deceased as Rs. 2282/-, the amount available would be Rs. $1141 \times 12 \times 11 = 1,50,612/-$. A sum of Rs. 50,000/- is allowed as love and affection for the mother, Rs. 10,000/- as funeral expenses and Rs. 10,000/- for transportation. The total of this would come to Rs. 2,20,612/-. The Tribunal had allowed a higher amount. Since there is no appeal by the insurance company, therefore I am not inclined to reduce the amount. The challenge in the cross-objections is only with respect to the driving licence. The onus to prove that the driver did not have a valid licence was upon the insurance company. They had failed to examine any witness and there is no infirmity in that finding. Therefore, the finding recorded on issue No. 5 is affirmed.

The appeal and the cross-objections are dismissed.

(ANITA CHAUDHRY)
JUDGE

July 20, 2017

Gurpreet

Whether speaking/reasoned	:	Yes
Whether reportable	:	No