

In the High Court of Punjab and Haryana at Chandigarh

F.A.O No. 1701 of 2012 (O&M)

Date of Decision: 02.8.2017

Pooja Gupta and others

.....Appellants

Versus

Kashmir Singh and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Neeraj Sharma, Advocate
for the appellants.

Mr. T.S.Grewal, Advocate
for respondent No. 1.

Mr. Rajbir Singh, Advocate
for respondent No. 2.

ANITA CHAUDHRY, J

CM-7050-CII-2012

Application is allowed for the reasons stated therein.

Delay of 73 days in refiling the appeal is condoned.

CM-7051-CII-2012

Application is allowed for the reasons stated therein.

Delay of 07 days in filing the appeal is condoned.

FAO-1701-2012

This is the claimants' appeal seeking enhancement in the award dated 11.8.2011 passed by the Motor Accident Claims Tribunal, Yamuna Nagar at Jagadhri.

Vikas was stated to be a Manager at a petrol pump. He was 24

years old. He died in an accident which occurred on 29.6.2010. He was a matriculate and was stated to be earning Rs. 12,000/- per month. Bhupesh Kumar, Manager of the Petrol Pump, who joined that position after Vikas, appeared and stated that the deceased was getting salary of Rs. 7500/- and produced attendance record of three months. The Tribunal took the income as Rs. 5,000/- per month and deducted 1/3rd and applied the multiplier of 18 and calculated the compensation to be Rs. 7,19,928/-. Rs. 10,000/- was added for loss of consortium, Rs. 5,000/- for loss of estate and Rs. 5,000/- as funeral expenses. The Tribunal had also allowed Rs. 23,869/- as medical expenses. A claim of Rs. 7,64,000/- was allowed.

The submission on behalf of the appellants is that the income had been taken on the lower side and the statement of the manager had been wrongly rejected. The counsel further submits that they were entitled to higher amount for funeral expenses, loss of consortium and loss of estate and there should have been addition towards future prospects.

The counsel appearing for the insurance company urges that the claimants had failed to prove that the deceased was a permanent employee and only the attendance record was produced and the deceased was only a matriculate and it is doubtful whether he could work as a Manager at a petrol pump. The counsel further submits that the minimum wages in Haryana in 2010 were around 4200/- per month and the Tribunal has already taken a higher amount for calculation and the Tribunal has adequately compensated the claimants.

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

matter has been referred to the Larger Bench and it would not be possible for the insurance company to make recoveries later.

The deceased was stated to be working as a Manager at a petrol pump. The only record produced was the attendance register. Vikas had passed his matriculation examination in the year 2000. Ex. P-19 is the senior secondary certificate to show that he had cleared 10+2 examination in March 2002. No record with respect to the salary was produced. Only an attendance register was produced. The attendance register is of doubtful authenticity. The cross-examination effected on Bhupesh Kumar PW-6 shows that different ink and pens have been used and there were cuttings with respect to the salary.

The minimum wages in Haryana in 2010 stood at Rs. 4214/-. Therefore, the income can be taken as Rs. 6,000/- for the purposes of calculation. The deceased had left behind his widow and two children and the deduction would be 1/3rd and the compensation would be Rs. 4,000/- x 12 x 18 = Rs. 8,64,000/-. Therefore, the amount payable would be as follows:-

	<i>Amount (in Rs.)</i>
Compensation for death	8,64,000/-
Actual amount spent on purchase of medicines	23,869/-
Loss of consortium	1,00,000/-
Funeral expenses	25,000/-
Loss of estate	50,000/-
Loss of love and affection for the minor	1,00,000/-
Loss of love and affection for the mother	1,00,000/-
Total	12,62,869/-

The Tribunal had awarded Rs. 7,64,000/- which would be

deducted and the remaining amount i.e. 4,98,869/- would be payable with interest @ 6% in the same ratio as was allowed by the Tribunal, from the date of the filing of the appeal till the amount is actually paid. The share of the minor would be deposited in the fixed deposit till she attains majority.

The award is modified. The appeal is partly allowed.

(ANITA CHAUDHRY)
JUDGE

August 02, 2017
Gurpreet

Whether speaking/reasoned	:	Yes
Whether reportable	:	No