

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**FAO No.4380 of 2012 (O&M)
Date of Decision: February 06, 2017**

Sunita and others

..Appellant(s)

Versus

Shamsher Singh and others

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Rakesh Nagpal, Advocate
for the appellants.

Ms. Vandana Malhotra, Advocate
for respondent no.3-Insurance Company.

ANITA CHAUDHRY, J.

This is the claimants' appeal seeking enhancement of compensation. The Motor Accident Claims Tribunal, Kaithal had awarded compensation of Rs.3,56,500/- for the death of Krishan Lal.

The contention of the appellants is that the Tribunal had taken the minimum wages of Rs.3,500/- per month and deduction of 1/4th had been made towards personal expenses but the minimum wages of that year were much higher. It was urged that the multiplier was not correctly applied as the claimants were four in number. It was also contended that 15% should have been added towards increase in the future income and the appellants were also entitled to compensation for love and affection and were seeking increase in the funeral expenses and for loss of consortium.

The submission of the counsel appearing for the Insurance Company is that the Tribunal had taken the minimum wages of that year as the claimant had failed to lead evidence with respect to his income. It was contended that the matter regarding future prospects is under consideration with a larger Bench. It was also urged that no law has been laid down that Rs.1 lac has to be awarded for loss of love and affection to each child. It was urged that the Tribunal had awarded interest @ 9% whereas the prevailing interest is not more than 6%.

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], (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 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.

The next question to be considered is the multiplier. The submission made by learned counsel for the appellants that 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 ***Munna 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 Chand (1996) 4 SCC 362***. 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 was not brought to the notice of the Supreme Court in ***Munna Lal Jain & Anr. (supra)***. Otherwise also, in view of ***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 binding precedent.

The minimum wages in January, 2004 were Rs.4632.98 Ps. per month, which can be rounded off to Rs.4633/- per month. The income taken by the Tribunal was not as per the minimum wages existing in that year. Considering the number of family members, a cut of 1/4th should have been made towards personal expenses, therefore, making the calculations again, the income available after deducting 1/4th would be Rs.3,475/- per month and the annual contribution would come to Rs.41,700/- and applying the multiplier of 11, the compensation would come to Rs.4,58,700/-.

The Tribunal had only awarded Rs.10,000/- on account of loss of consortium, loss of estate and funeral expenses, which is less, therefore, I would allow Rs.1 lac on account of loss of consortium, Rs.25,000/- as funeral expenses instead of Rs.10,000/- as awarded by the Tribunal and Rs.1 lac for loss of love and affection to the children. The total compensation payable would be Rs.4,58,700/- + Rs.2,15,000/- = Rs.6,73,700/-. The Tribunal had allowed Rs.3,56,500/-, which would be deducted and the amount payable would be Rs.3,17,200/-, which would be paid to the claimants in the same ratio as ordered by the Tribunal with interest @ 6% from the date of filing of the appeal i.e. 23.02.2012 till realization.

The appeal is partly allowed.

(ANITA CHAUDHRY)
JUDGE

February 06, 2017
sunil

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No