

In the High Court of Punjab and Haryana at Chandigarh

1.

F.A.O No. 4813 of 2012
Date of Decision: 30.1.2017

Lakhbir Singh

.....Appellant

Versus

Gaurav Kaushik and others

.....Respondents

2.

F.A.O No. 4822 of 2012

Kanwaljeet Kaur and others

.....Appellants

Versus

Gaurav Kaushik and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Ms. Amandeep Kaur, Advocate
for the appellants.

Mr. Subhash Goyal, Advocate
for respondent No. 3.

ANITA CHAUDHRY, J

Two appeals have been preferred against the award passed by the Motor Accident Claims Tribunal, Chandigarh dated 9.9.2011 seeking enhancement of compensation allowed to Lakhbir Singh for the injuries and to Kanwaljeet Kaur and her daughter in respect to the death of Harpreet Singh.

Coming to the appeal filed by Lakhbir Singh first, he was

injured in the accident which occurred in the intervening night of
Gurpreet Singh Bhatia
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I attest to the accuracy and
authenticity of this document
High Court Chandigarh

24/25.10.2008. He was sitting on the pillion of a motor cycle driven by Harpreet Singh. They were going towards the bus stand and were proceeding from the side of the light point Sector-17/18, Chandigarh. They had reached near the bus stand at 1.10 A.M. when a car driven by Gaurav Kaushik came from behind and hit the motor cycle. Harpreet Singh fell on the road and received injuries and later died. Lakhbir Singh also sustained injuries.

Lakhbir Singh was 26 years old and was working with Modern Tent Services. It was claimed that he was getting Rs. 4,000/- per month as salary. He had suffered permanent disability to the tune of 12% as there was a fracture L4 vertebra which resulted in restriction in movement of the spine.

The Tribunal noted that there was no evidence with respect to the income but took the income at Rs. 4,000/- per month which a labourer could earn during that period and assessed the loss to be Rs. 16,000/- and for the disability Rs. 2,000/- was awarded for each percent of disability. It noted that the bills placed on record were to the tune of Rs. 5,847/- and the following compensation was awarded:-

Sr. No.	Head under which amount awarded	Amount
1.	Loss of earning	Rs. 16,000.00
2.	Compensation on account of 12% permanent disability	Rs. 24,000.00
3.	Medical expenses	Rs. 5,847.00
4.	Compensation on account of pain and suffering	Rs. 5,000.00
5.	Expenses incurred on transportation	Rs. 5,000.00
6.	Compensation on account of nutritious diet	Rs. 5,000.00
Total		Rs. 65,847.00

With respect to the death case, the claimants had pleaded that Harpreet Singh was 23 years old and was working with Indiana Fero Alloys on a monthly salary of Rs. 4500/-. He was stated to be unmarried. The Tribunal considered the income to be Rs. 4000/- per month and deducted 50% as the contribution to the family and the annual dependency was taken to Rs. 24,000/- and relying upon ***Shakti Devi versus New India Insurance Co. Ltd. and another 2010(4) RCR (Civil) 950***, it applied the multiplier keeping the age of the claimants into account i.e. 13 and assessed the compensation to be Rs. 3,12,000/- and Rs. 10,000/- was added on account of transportation, funeral and last rites.

The submission on behalf of appellant Lakhbir Singh was that the Tribunal had not granted any compensation for the disability nor had awarded any amount for pain and suffering and attendant charges. It was urged that on account of the fracture movement is painful and it affects his day to day working and his prospects of getting a better job had diminished and some addition should be made keeping the future prospects in mind and the multiplier should have been applied to find out the loss of functional disability. Reliance has been placed on '***Syed Sadiq etc. versus Divisional Manager, United India Ins. Co. 2014(1) R.C.R. (Civil) 765***'.

The claimant had sustained a fracture of the L4 vertebra and the disability was assessed at 12% of the entire body. The functional disability would not be more than 6%. I am inclined to hold that the Tribunal had erred in not ascertaining the functional disability. The claimant had suffered a fracture of the vertebra and he will not be able to bend forward or lift heavy material which would be essential when he is taken to be a labourer.

Therefore, I am inclined to observe that the claimant has got the functional

disability to the extent of 6%. I find that there is no evidence with respect to the income. Therefore, the income was rightly taken at Rs. 4,000/- per month and assessing the amount and after applying the multiplier of 18 the loss would be Rs. 51,840/-. The Tribunal had awarded Rs. 24,000/-. The balance payable would be $51,840.00 - 24,000.00 = 27,840.00$ for the disability. The appellant is also allowed Rs. 15,000/- for pain and suffering over and above the amount allowed by the Tribunal and Rs. 5,000/- as attendant charges. The total of the amount now payable is Rs. 27840/- + 15,000/- + 5,000/- = 47,840/-.

Appellant Lakbir Singh is, thus, entitled to a increase of Rs. 47,840/- with interest at the same rate that was allowed by the Tribunal and it shall be payable from the date of filing of this appeal till realization.

Now coming to FAO-4822-2012. The contention of the appellants was that the Tribunal had taken the age of the mother while applying the multiplier and in '*Sarla Verma and others versus Delhi Transport Corporation and another 2009 ACJ (SC) 1298*', it had been held that where the family of the bachelor was large and dependent on the income of the deceased then even in the case of a bachelor the personal expenses should be restricted to $1/3^{\text{rd}}$ and the contribution to the family should be taken as $2/3^{\text{rd}}$. It was urged that the deceased was taken to be a labourer and there should have been increase of 50% in future prospects. Reliance was placed upon '*Munna Lal Jain and another versus Vipin Kumar Sharma and others, 2015(3) SCC (Civil) 315*'.

The submission on the other hand was that there are judgments according to which the age of the claimants have to be taken into account

present case are only two and 50% was rightly deducted towards personal expenses and the Apex Court in *Shakti Devi's* case (supra) had held that choice of multiplier would be taken by the age of the claimants and not by the age of the deceased. It was urged that with respect to the addition in the income towards future prospects the matter is pending before the Apex Court.

The claimants had pleaded that Harpreet Singh was getting a salary of Rs. 4500/- per month. The income was rightly taken at Rs. 4000/- per month. The deceased was a bachelor and the deduction towards personal expenses would be 50% and not 1/3rd as the family members/claimants were not large in number. Coming to the contention as to whether the multiplier should be taken on the basis of the age of the deceased or the age of the claimants, the appellant had relied upon '***Amrit Bhanu Shali and others versus National Insurance Co. Ltd. and others 2012(4) RCR (Civil) 343'*** and '***P.S.Somanathan and others versus District Insurance Officer and another 2011(2) RCR (Civil) 228***. In both these cases the deceased was unmarried and multiplier has been selected on the basis of the age of the deceased.

The question to be considered is the multiplier applicable in this case. The submission made by learned counsel for the appellants that multiplier has to be as per the age of the deceased as referred to in the *IInd 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

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 v. Mohd. Vajahath Hussain @ Fasi, (2011) 2 SCC 94*** 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.

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's*** case (supra) 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."

A Single Bench of Delhi High Court in '**Narinder Bishal And Anr. vs Sh. Rambir Singh and Ors.** decided on 20.2.2008, was of the view that future prospects cannot be taken unless there is cogent and convincing evidence and future prospects have no correlation to the price indexing inflation. It has been held as under:-

"14. I, therefore, do not find any infirmity in the impugned award so far taking the monthly income of the deceased at Rs. 2,796/- as prevalent on the relevant date of the tragic accident by the Tribunal is considered. As regards the plea of the appellant to consider the revision of minimum wages of the deceased after taking into consideration such increase under the [Minimum Wages Act](#), which show such wages virtually becoming double after a gap of 10 years period. This contention of counsel for the appellant is repelled by counsel appearing for the respondent on the strength of the Apex Court's judgment reported in Bijoy Kumar Dugar's case (Supra) that in the absence of any evidence regarding future prospects, the future prospects cannot be taken into consideration. In most of the recent appeals, this controversy

has become a bone of contention between the claimants as well as the insurance companies. In Bijoy Kumar Dugar's case (Supra), the Apex Court was dealing with the case of a student, science graduate, pursuing his law studies and who at the relevant time was earning a sum of Rs. 4,000/- per month as an attorney holder of some petrol pump and in the said case, the contention was raised that the deceased would have earned minimum wages of Rs. 8,000/- or Rs. 10,000/- per month, if not, more, had he not died in the accident. No evidence was adduced by the claimants in the said case to prove how the deceased would have earned the said income of Rs. 8,000/- to Rs. 10,000/- per month. In the backdrop of facts of the said case, the Supreme Court held that the bald assertion of the claimants that the deceased would have earned Rs. 8,000/- to Rs. 10,000/- per month in the span of his life time had he not met with the accident cannot be accepted as his legitimate income unless the facts are proved by leading cogent and reliable evidence before the MACT. It would be relevant to refer to the observations of the Supreme Court in the said judgment, which are reproduced as under:

8. The mere assertion of the claimants that the deceased would have earned more than Rs. 8000 to Rs. 10,000 per month in the span of his lifetime cannot be accepted as legitimate income unless all the relevant facts are proved by leading cogent and reliable evidence before MACT. The claimants have to prove that the deceased was in a trade where he would have earned more from time to time or that he had special merits or qualifications or opportunities

which would have led to an improvement in his income. There is no evidence produced on record by the claimants regarding future prospects of increase of income in the course of employment or business or profession, as the case may be.

15. *In the above judgment, the Supreme Court has also considered the case of [General Manager, Kerala Transport Road Corporation v. Susamma Thomas](#) , wherein the claimants had satisfactorily proved on record the prospects of the deceased concerning his advancement in his future career therefore, taking into consideration the said aspect of future career, the Court had made highest estimate of his income and then granted the relief to the claimants. The Apex Court has also considered in the aforesaid judgment, the celebrated judgment of [Sarla Dixit v. Balwant Yadav and Ors.](#) reported in 1996 (III) AD 13 (SC) in which also enough evidence was led with regard to the future prospects of the deceased. After considering the above said cases, the Hon'ble Supreme Court in Bijoy Kumar Dugar's case observed that no evidence was led by the claimants to prove the future prospects regarding increase of income in the course of his employment or business or profession, therefore, the aspect of future prospects could not be considered. The legal position after the judgment of Bijoy Kumar Dugar's case thus emerges that where the claimants are able to establish and sufficiently prove the future prospects of the deceased in the course of his employment or business or profession the criteria as laid down in Sarla Dixit's*

case can be made applicable as in the said criteria, there is an in built mechanism of taking into account the future prospects of the deceased, while in other cases in the absence of any evidence, the said criteria of Sarla Dixit's case cannot be adhered to and a normal method of calculating the income of the deceased with an appropriate multiplier after deducting the personal expenses out of the total income to assess the exact loss of dependancy can be arrived at. For determining the earning of the deceased or victim of the accident, the claimants are supposed to prove the exact income of the deceased by leading some cogent and reliable documentary evidence as to the nature of his employment or trade or business or in any other activity he was involved in and then the said income can be taken into consideration for determining the quantum of compensation and if in such a case, the claimants are further able to establish the future prospects as well, then the criteria laid down in Sarla Dixit's case would get attracted. There can be another category of cases where the claimants are able to establish the future prospects of the deceased by quantifying the amount to be earned by the deceased in future with the help of cogent, reliable and convincing evidence and in all such cases the tribunal can take into consideration such future increase as has been established by the claimants on record. The difficulty however, would arise in all those cases where although the claimants are able to sufficiently establish on record the educational qualification of the deceased or the

nature of his employment whether skilled, semi-skilled or unskilled but fail to establish by any reliable evidence to prove the exact income of the deceased. In such cases, question arises whether the Tribunal can take into consideration the minimum wages and the periodical revision of minimum wages as are fixed by the Government under the [Minimum Wages Act](#). To examine this question, it will have to be considered whether the revision which takes place under the [Minimum Wages Act](#) can be equated with the future prospects of a deceased. As would be evident from catena of judgments of the Supreme Court, the future prospects have no correlation with the price index, inflation or denunciation of currency value.

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. It would not be possible by insurance company to make recoveries if the Larger Bench takes the view rendered in ***Rajesh and others*** (supra).

The deceased was 23 years old. Therefore, the multiplier applicable would be age of the parents.

I would not deviate from the findings of the Tribunal on the income of the deceased which was assessed at Rs. 4000/- per month.

The income is taken at Rs. 4000/- per month. The claimants are the mother and sister. After deducting 50% the amount comes to Rs. 2000/- and after multiplying the same with 12, the annual dependency would come to Rs. 24,000/- and applying the multiplier of 13, the amount would come to Rs. 3,12,000/-. I find that the amount awarded by the

Tribunal on conventional heads have not been added. Therefore, Rs. 1,00,000/- is added towards loss of love and affection for the mother and Rs. 15,000/- added over and above the amount allowed by the Tribunal as funeral expenses and Rs. 25,000/- is added for loss of estate raising the total to 1,00,000/- + 25,000/- + 15,000/- = 1,40,000/- + 3,12,000/- = 4,52,000/-. The Tribunal had awarded Rs. 3,22,000/- which would be deducted and the remaining amount i.e. Rs. 1,30,000/- would be paid to appellant Kanwaljeet Kaur etc. at the same rate of interest as was allowed by the Tribunal below from the date of institution of the appeal till realization. The amount shall be paid jointly and severally by the respondents.

Both the appeals are allowed to the extent noted above.

(ANITA CHAUDHRY)
JUDGE

January 30, 2017
Gurpreet

Whether speaking/reasoned : Yes
Whether reportable : Yes