

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

FAO No.3373 of 2013

Date of Decision: 25.07.2017

Ram Dev Ray and others

...Appellant(s)

Versus

Dharamjeet Singh and others

... Respondent(s)

CORAM:-HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Sandeep Jasuja, Advocate
for the appellant(s).

Ms. Vandana Malhotra, Advocate
for respondent No.3.

ANITA CHAUDHRY, J.(ORAL)

Notices issued earlier to respondents No.1 and 2 were received back unserved for want of their correct addresses. Their correct addresses have not been furnished so far. No steps seems to have taken for their service and notice to them could not be issued. Service upon respondents No.1 and 2 stands dispensed with.

This is the claimant's appeal seeking enhancement of the award dated 07.03.2013 passed by the Motor Accident Claims Tribunal, Gurgaon (herewith referred to as 'the Tribunal' in short).

The claimants are the parents, minor brother and sister of deceased-Ganpati Ray, who was 30 years old, and unmarried. Ganpati was driving a canter bearing registration No.HR-55M-6448 on 07.12.2011. He met with an accident at about 4.15 a.m. The truck driven by respondent No.1 was ahead of him, who suddenly applied the brakes and took a turn without giving any indication. As a result,

the canter had hit the rear portion of the offending truck. The impact of the accident was so high that body of the canter was broken and got entangled with rear portion of the truck and Ganpati was trapped in the cabin of the canter. Some workers who were working in a nearby Dhaba on the G.T. Road Karnal, took him out and respondent No.1 managed to run away from the spot leaving the offending truck behind.

It was claimed that deceased was a driver with Satbir Singh-PW/6 and was drawing salary of Rs.7,000/- per month and was getting diet money @150/- per day. It was claimed that the deceased was living with his employer in village Darbaripur and was paying Rs.1500/- as rent to his employer.

The Tribunal rejected the statement of the witnesses holding that there was no record to show that he was earning that amount. The income of the deceased was taken as Rs.5000/- per month and 50% deduction was made since he was unmarried, multiplier of 13 was applied and the compensation was calculated as Rs.3,90,000/-. A sum of Rs.5000/- was added towards last rites and the total compensation amount assessed was Rs.3,95,000/-. It was held to be a case of contributory negligence and the liability was apportioned at 50:50. The claimants were allowed compensation of Rs.1,97,500/- which was to be shared only by claimants No.1 and 2.

The Insurance Company was given the rights of recovery from the owner and driver since the driving licence was found to be

fake.

The submission made on behalf of the appellants was that the income had been taken on the lower side. The counsel submits that the driving licence of the deceased was available on record and he could drive a transport vehicle and the claimants had pleaded that he was earning Rs.14,500 per month and the income had been taken on the lower side. The counsel also submits that the finding regarding contributory negligence is also wrong and a wrong multiplier has been applied and it should be 13. The counsel also submits that some amount towards future prospects should be added and the mother was entitled to compensation on the head of loss of love and affection.

The submission on the other hand was that a false statement had been made with respect to the income as the claimants had pleaded that he was getting a salary of Rs.10,000/- whereas so called employer stated that he was paying Rs.7,000/- per month. The counsel had submitted that a skilled worker was getting an amount of Rs.5000/- per month and the minimum wages were lower in 2011. The counsel submits that the Tribunal had rightly applied multiplier of 13 keeping the age of the parents and the findings recorded by the Tribunal with respect to the contributory negligence are correct.

The Tribunal had held the deceased to have contributed and had apportioned his liability at 50%. The accident had occurred

in the early hours i.e. at 4.15 a.m. on a winter night. The deceased was driving a canter and there was a truck in front of him. The accident occurred because the truck ahead had suddenly applied brakes. The canter driver was expected to keep a safe distance and had he maintained the distance, he could have stopped his vehicle in time. The impact of the accident was so high that the canter body was broken which shows that the deceased was also driving at a high speed and had contributed but I would apportion the liability at 60:40 i.e. 60% on respondent No.1 and 40% upon the deceased.

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 our 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], (para12), 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."

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 minimum wages in 2011 were around Rs.4600/- for a labourer and for a highly skilled around Rs.5300/-. There was no finding to show that the deceased was getting salary of Rs.7000/-. Therefore, the income of the deceased is taken as Rs.5300/-. After making a deduction of 50% the amount available would be Rs.2650/-.

The multiplier of 13 was correctly applied, no addition towards future prospects is to be made, therefore, making the calculation again the compensation would be $Rs.2,650 \times 12 \times 13 = Rs.4,13,400/-$. A sum of Rs.25000/- should be added for loss of love and affection for the mother, Rs.10000/- for funeral expenses, Rs.5000/- for transportation, which raises the total to Rs.4,53,400/-. 60% of this amount would be Rs.2,72,040/-, the Tribunal had already allowed Rs.1,97,500/- which would be deducted and the remaining enhanced amount would be paid first by the Insurance company alongwith interest @ 6% from the date of filing appeal only to appellants No.1 and 2, thereafter, they can recover the same from the owner and driver, as ordered by the Tribunal.

The awarded is modified and the appeal is partly allowed.

July 25, 2017
ps-l

(ANITA CHAUDHRY)
JUDGE

Whether Reasoned/Speaking

Yes/No

Whether Reportable

Yes/No