In the High Court of Punjab and Haryana at Chandigarh

1. FAO No. 1980 of 2014 (O&M)
Date of Decision: 28.09.2017

Pooja and others ....Appellants

Versus

Gita Ram and others ....Respondents

2. FAO No. 1981 of 2014 (O&M)

Usha and others ....Appellants

Versus

Gita Ram and others ....Respondents

3. FAO No. 7291 of 2014 (O&M)

Shri Ram General Insurance Co. Ltd. ....Appellant

Versus

Pooja and others ....Respondents

4. FAO No. 7292 of 2014 (O&M)

Shri Ram General Insurance Co. Ltd. ....Appellant

Versus

Usha and others ....Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Vikram Bali, Advocate
for the appellants in FAO-1980-2014 & FAO-1981-2014 and
for respondents No. 1 to 5 in FAO-7291-2014
for respondents No. 1 to 3 & 5 in FAO-7292-2014.

Mr. Arun Sharma, Advocate for
Mr. T.K. Joshi, Advocate

for the appellant-insurance company
(in FAO-7291-2014 and FAO-7292-2014) &
for respondent No.3-insurance company
(in FAO-1980-2014 and FAO-1981-2014).

Claimant Singh Ram died (in FAO-1981-2014).

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ANITA CHAUDHRY, J

These are four appeals arising out of the award dated 27.01.2014, passed by the Motor Accident Claims Tribunal, Ambala.

Claimant Singh Ram (appellant No. 4 in FAO-1981-2014 and respondent no.4 in FAO-7292-2014) had died. His legal heirs are already on record, therefore, his name is struck off in both the appeals.

The facts essential for disposal of the appeals are necessary. Jitender Kumar was driving a Alto car and was returning home. Rangi Lal was also travelling in the same car. The car struck the rear of a truck which was stated to be parked in the middle of the road. The accident occurred at 1:00 AM at night. Both Jitender and Rangi Lal died.

The insurance company took the plea that the deceased-Jitender Kumar was at fault and he was driving at a high speed and was entirely to be blamed and if the plea was not accepted then it was a case of contributory negligence. The Tribunal held the truck driver to be solely responsible for the accident. It accepted the statement made by the Manager of M/s. Ankur Enterprises who deposed that the deceased was getting a salary of Rs.15,600/-. The calculations were made taking the income to be Rs.15,000/- per month. A deduction of 1/4th was made towards personal expenses and the multiplier of 16 was applied to calculate the compensation to be Rs. 21,60,000/-. A sum of Rs.10,000/- was added for transportation and funeral expenses and a sum of Rs. 10,000/- was added for loss of consortium and an award of Rs. 21,80,000/- was passed. The Tribunal had apportioned the amount which is detailed in para No. 19 of the award.

So far as deceased Rangi Lal is concerned, he was working as Helper on JCB machine in M/s Ankur Enterprises. The Tribunal took his income at Rs. 8,000/- per month. A deduction of $1/4^{th}$ was made towards personal expenses and the multiplier of 18 was applied to calculate the compensation to be Rs. 12,96,000/-. A sum of Rs. 10,000/- was added for transportation, funeral expenses and last rites expenses and a sum of Rs. 10,000/- was added for loss of consortium and an award of Rs. 13,16,000/- was passed. The Tribunal had apportioned the amount which is detailed in para No. 19 of the award.

Four appeals have been filed, two by the claimants seeking enhancement and the others by the insurance company.

The submission on behalf of the claimants is that the income has been taken on a lower side and the future prospects have not been added and the amount allowed for funeral expenses and loss of consortium was on the lower side and the minor children were entitled to a separate amount for loss of love and affection and a separate amount should have been allowed for loss of love and affection to the mother.

The submission on behalf of the insurance company is that the accident occurred entirely on account of fault of Jitender and Rohit (his brother) had lodged the FIR but was not present on the spot and this fact is borne out from the statement made by Pooja who in her cross-examination had stated that they had received information regarding the accident at home and then her brother-in-law went to the spot. The counsel further submits that in case this argument is not accepted, then it was a case of contributory negligence and the deceased was driving at a high speed and the impact of the accident shows the speed at which he was driving and a JCB machine had to be called to extricate the injured from the vehicle. The counsel submits that had the speed been reasonable, the driver would have stopped short well in time but as the speed was very high he could not control and both the occupants were crushed in the accident. The counsel further submits that there was no evidence with respect to the income and no appointment letter was produced nor the income-tax returns were produced which would have the details of the employees and the expenditure made towards salary and the entries in the register can be prepared at any time. The counsel submits that Rohit is the proprietor of M/s. Ankur Enterprises and he is the brother of the deceased and it was very easy to prepare records and there is no way of finding whether those were signed by the deceased or someone else and the income is on the higher side. It was urged that Rohit had appeared as PW but did not state a word that his brother Jitender or Rangi Lal were employed in his concern and it is a doubtful case.

Responding to the arguments the counsel appearing for the claimants urges that the Chartered Accountant of the Company had come to make a statement and Jitender's name figures at Sr. No. 1 and also of Rangi Lal at Sr. No. 5 and if the insurance company was doubting their claim, they could have ascertained the facts and could have summoned the record to satisfy themselves.

Coming to the question of the presence of Rohit first, if the entire cross-examination of Pooja PW-2 is read, it is clear that Rohit had informed the family about the accident. Pooja had stated that her brother-in-law came home and had informed and thereafter, had left for the site. The police had reached the spot and found Rohit on the spot. Both the vehicles were found on the spot. The manner in which the accident had occurred does not remain in doubt. The involvement of the vehicles is proved. Enough material had been collected by the police to challan the driver of the truck. The truck was parked on the road and therefore, the driver of the truck was held to be negligent but Jitender was also to be blamed as he had contributed in the accident. The accident occurred at night and Jitender rammed into the stationary truck from behind. Had the speed of the vehicle been slow the driver would have managed to stop the vehicle well in time and the damage would not have been so high. It is a case of contributory negligence and I would fix the responsibility in the ratio of 60:40 i.e. the driver of the truck and Jitender respectively. It is held that it was a case of contributory negligence and the claimants were entitled only to 60% of the award amount.

Now coming to the addition towards future prospects if any, there is no evidence that the deceased was a permanent employee.

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],(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 finding recorded by the Tribunal declining any addition on account of future prospects is correct.

The claimants had examined an employee of M/s. Ankur Enterprises who had deposed that Jitender was working as a Manager and was drawing salary of Rs. 15,600/- per month. The copy of payment register shows the salary to be Rs. 14,200/- per month. In April 2011 it is shown to be Rs.15,600/- per month. It does not mention any deduction but the actual amount paid is Rs. 12,480/-. It has not been explained as to on what account deduction was made, therefore, the income on which the calculations should be made would be Rs. 12,480/-. Considering the dependents, a deduction of $1/4^{th}$ has to be made towards personal expenses and the amount available for the family would be Rs.9,360/- per month and the annual income would be Rs.1,12,320/- and after applying the multiplier of 16 the amount would be Rs.17,97,120/- and 60% of this would be Rs.10,78,272/-. The amount, therefore, payable would be as under:-

Sr. No.	Head of Compensation	Amount
1.	Compensation for the death	Rs.10,78,272/-
2.	Loss of consortium	Rs.1,00,000/-
3.	Loss of love and affection for the children	Rs.1,00,000/-
4.	Loss of love and affection for the mother	Rs.1,00,000/-
5.	Funeral expenses	Rs.25,000/-

6.	Loss of estate	Rs.1,00,000/-
7.	Transportation	Rs.15,000/-
	TOTAL	**Rs.15,18,272/-**

The total amount payable for the death of Jitender would be Rs. 15,18,272/-, and would be paid by the insurance company with interest @ 6% from the date of filing of the claim petition till realization. Minors' share shall be deposited as ordered by the Tribunal in F.D. of a nationalized bank till they attain majority.

Now coming to the case of claimant Usha and others, the submission made on behalf of the claimants-appellants was that deceased Rangi Lal was less than 40 years of age and therefore, an addition of 50% in the award should have been made for the future prospects which was not considered though the Apex Court in ***Rajesh & Ors. v. Rajbir Singh & Ors. (supra)*** had allowed it. It was also contended that the amount allowed for the last rites and loss of consortium was on the lower side and separate amount should have been awarded for love and affection for each minor child and the deduction should have been $1/5^{th}$ as per ***Sarla Verma'***s case (supra).

Rangi Lal was not a permanent employee. His salary was not fixed. No appointment letter was produced. There was no provision for annual increment. The record which had been produced shows that the wages were varying each month and it was explained by the witness summoned from Ankur Enterprises that they were paid on the basis of number of days worked. Therefore, I do not propose to make any addition for future prospects and the finding recorded by the Tribunal is affirmed.

The Tribunal had taken the income of deceased Rangi Lal as Rs. 8,000/- per month. On perusal of the wage register Ex. PW6/A, I find that it was varying and on average the income would come to Rs. 7500/- per month. Deducting 1/4th, the amount available for the family would be Rs. 5625/- and the annual contribution would come to Rs. 67,500/- and applying the multiplier of 18, the compensation would come to Rs. 12,15,000/- and 60% of this would come to Rs. 7,29,000/-. The amount, therefore, payable to the LRs of Rangi Lal would be as under:-

Sr. No.	**Head of Compensation**	**Amount**
1.	Compensation for the death	Rs. 7,29,000/-
2.	Loss of consortium	Rs. 1,00,000/-
3.	Loss of love and affection for the children	Rs. 1,00,000/-
4.	Funeral expenses	Rs. 25,000/-
6.	Loss of estate	Rs. 1,00,000/-
7.	Transportation	Rs. 15,000/-
	TOTAL	**Rs. 10,69,000/-**

The total amount payable to the legal heirs of Rangi Lal namely Usha and her children would be Rs. 10,69,000/-. The ordered amount shall be paid by the insurance company with interest as allowed by the Tribunal from the date of filing of the claim petition till realization. The share of the minor would be deposited in the fixed deposit till they attain majority.

The award is modified to the extent noted above and the appeals filed by the claimants are dismissed. The appeals filed by the insurance company are partly allowed.

(ANITA CHAUDHRY)
JUDGE

September 28, 2017
Gurpreet

Whether speaking/reasoned : Yes
Whether reportable : No