

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.2181 of 2014 (O&M)
Date of Decision: February 21, 2017

Harbans Kaur and another

..Appellant(s)

Versus

Ravi Kumar and others

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Atul Jain, Advocate
for the appellants.

Mr. Anil Kumar Spehia, Advocate
for respondent nos.1 & 2.

Mr. M.B. Jain, Advocate
for respondent no.3-insurance company.

ANITA CHAUDHRY, J.

This appellants are the claimants seeking enhancement of the award dated 16.11.2013, allowed to them by the Motor Accident Claims Tribunal, Kapurthala.

Jasbir son of the appellants had died in an accident, which occurred on 02.05.2010. He was 27 years old and was un-married. His annual income was found to be Rs.25,692/-. Applying the multiplier of 11, after making a deduction of 1/3rd the contribution was calculated and the compensation was assessed at Rs.2,82,612/-. A sum of Rs.20,000/- was added towards funeral expenses and a sum of Rs.20,000/- was added for other rituals. The compensation was

apportioned between both the parents in equal share holding all the respondents responsible jointly and severally to pay the compensation.

The submission on behalf of the appellants is that the age of the parents should not have been taken to apply the multiplier and age of the deceased should have been taken and the deceased was doing agricultural work and was a milk vendor and used to earn Rs.30,000/- per month and the Tribunal had wrongly assessed the annual income to be Rs.25,692/-. It was urged that an addition towards future prospects should have been made and the parents were entitled to separate compensation for loss of love and affection and were seeking enhancement in the funeral expenses. Reliance was placed upon *Munna Lal Jain and another Vs. Vipin Kumar Sharma and others 2015(3) SCC (Civil) 315*, *Amrit Bhanu Shali and others Vs. National Insurance Co. Ltd. and others 2012(4) RCR (Civil) 343*, *Rajesh and others Rajbir Singh and others 2013(3) RCR (Civil) 170*, *Sandeep Sharma Vs. Baljeet Kaur and others, DOD 05.11.2014 (P&H)*, *Pirthi Singh and another Vs. Asri and others, FAO No.5442 of 2009, DOD 18.03.2014 (P&H)*, *FAO No.7517 of 2014, DOD 18.01.2017 (P&H)*, *Tirath Kaur and another Vs. Jaswant Singh and others 2016(4) RCR (Civil) 227*, *National Insurance Co. Ltd. Vs. Krishna Devi and others, FAO-1194-2014, DOD 03.03.2014 (P&H)*, *Indra Devi and others Vs. Ashok Kumar and others FAO-7517-2014, DOD 18.01.2017 (P&H)*, *Babli and others Vs. Suresh and another 2016(4) RCR (Civil) 220* and *Vimal Kanwar and others Vs. Kishore Dan and others 2013(2) RCR (Civil) 945*.

To tied over the submissions, the counsel for the insurance company had urged that there was no evidence with respect to the income. It was urged that no addition towards future prospects can be made as the matter is under consideration with the Larger Bench and the deceased was unmarried, therefore, deduction of 50% should have been made as per the decision of Apex Court in *Sarla Verma v. DTC, (2009) 6 SCC 121* and the multiplier was correctly applied as that of the parents. It was urged that in *New India Assurance Company Ltd. Vs. Smt. Shanti Pathak and others 2007(3) RCR (Civil) 593*, the multiplier was applied according to the age of the claimants and for the self-employee or for the fixed salaried, no addition towards future prospects is to be made. Reliance was placed upon *Savita and others Vs. Satpal and ors. Vol.CLXXX-(2015-4) PLR 854, Babli and another Vs. Dalip Singh etc. FAO No.65 of 1997, DOD 03.02.2016 (P&H), Shashikala and others Vs. Gangalakshamma and another (2015) 9 SCC 150, New India Assurance Co. Ltd. Vs. Smt. Shanti Pathak and others 2007(3) RCR (Civil) 593.*

A perusal of the record shows that a notification issued by the Labour Department (Ex.P13) had been placed on record by the claimants to show the minimum rates for un-skilled workers and according to it in 2010, the minimum wages were Rs.3,554/- per month. The Tribunal though had noticed that the deceased was unmarried but wrongly made a deduction of 1/3rd instead of 50% and calculated the loss which is not correct and the calculation will have to be made again. It is now to be examined whether any addition for future prospects should have been made.

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.

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."

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 index or inflation.

So far as Munna Lal Jain (supra) is concerned, the same may not be applicable in view of the fact that the matter stood referred to larger bench in Rajesh and others (supra). Also in *National Insurance Company Ltd. Vs. Pushpa and others* (SLP No.8058 of 2014 decided on 2.7.2014), Shashikala and others (supra), the Supreme Court referred the matter to larger bench for deciding the point regarding addition of future prospects to the annual income. It was also mentioned that Rajesh and others (supra) stood referred to

a larger bench. Since reference has been made in different cases to larger bench for finally deciding the point regarding grant of future prospects, it would not be advisable to grant the same now because in case a divergent view is received from the Supreme Court later on, it will not be possible for the Insurance Company to make recovery. Also in Pushpa's case (supra), the Supreme Court had stayed recovery of the amount beyond Rs.20,00,000/- as stay had been prayed for by the Insurance Company on account of future prospects.

There are no exceptional or extraordinary circumstances in the case and I do not propose to make any addition for future prospect as even there is no evidence.

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.

Making the calculations and taking the income to be Rs.3,554/- per month and making a deduction of 50%, the amount available as contribution to the parents would be Rs.1,777/- per month. The annual contribution would be Rs.21,324/- and after applying the multiplier of 11, the compensation would come to Rs.2,34,564/-. Some addition should be made on the miscellaneous heads. Therefore, a sum of Rs.5,000/- is added for funeral expenses, a sum of Rs.1 lac is added for loss of love and affection for the mother and a sum of Rs.10,000/- is added for transportation charges. The total of this comes to Rs.3,49,564/-. The Tribunal had allowed Rs.2,28,408/-, which would be deducted and the remaining amount would be shared by both the appellants in equal share. Insurance company would be liable to pay this amount with interest @ 6% from the date of filing of the appeal i.e. 03.03.2014 till realization.

The appeal is partly allowed.

(ANITA CHAUDHRY)
JUDGE

February 21, 2017
sunil

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No