

In the High Court of Punjab and Haryana at Chandigarh

F.A.O No. 2960 of 2015 (O&M)

Date of Decision: 12.7.2017

Rimpi and others

.....Appellants

Versus

Som Nath and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Naveen Gupta, Advocate
for the appellants.

Mr. Udit Garg, Advocate
for respondent No. 2.

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

ANITA CHAUDHRY, J

CM-8959-CII-2015

Application is allowed for the reasons stated therein.

Delay of 46 days in filing the appeal is condoned.

FAO-2960-2015

The appellants are seeking enhancement in the compensation awarded by the Motor Accident Claims Tribunal, Ambala vide award dated 30.10.2014.

Respondent No. 1 has died. A report in this regard has been received.

Counsel for the petitioner submits that the liability was placed upon the insurance company, therefore there is no need to implead the legal

heirs of respondent No. 1 and they are ready with their submissions today.

Vinod Kumar aged 28 years was married and had two children. He died in a vehicular accident on 20.10.2013. The claimants' plea that he was earning Rs. 20,000/- per month from his meat shop was rejected as no documentary proof was produced. The deceased was taken as a labourer and his income was taken as Rs. 5,000/- and after making a deduction of $\frac{1}{3}$ rd the compensation was calculated at Rs. 6,80,000/- by applying the multiplier of 17. Besides this a sum of Rs. 1,00,000/- was allowed for loss of consortium and Rs. 25,000/- as funeral expenses.

Counsel for the appellants submits that the deceased was taken to be a labourer whereas he was running a meat shop and his income was much higher. It was urged that even the minimum wages were more than Rs. 5000/- and stood at around Rs. 5500/-. Counsel further submits that an addition towards future prospects should have been made and the Tribunal failed to award any amount for loss of love and affection for the children and no amount was awarded for transportation.

The submission on behalf of the insurance company is that in the case of a labourer there can be no addition towards future prospects and the matter is under consideration before the larger Bench and the minimum wages were not Rs. 5500/- in October 2013.

As per *Sarla Verma v. DTC, (2009) 6 SCC 121*, where the dependants of the deceased are 2-3 then deduction of $\frac{1}{3}$ rd has to be made which was rightly done. There is no evidence to show that the deceased was running a meat shop. The oral statement was not enough, the Tribunal had rightly taken the income to be that of a labourer and reliance on the notified minimum wages was the only correct way. The minimum wages in

to be Rs. 5,000/- which was less than the minimum wages. Therefore, the calculations will have to be made again. After deducting 1/3rd the calculation would be Rs. 3561/- x 12 x 17 = 7,26,444/-.

As regards future prospects, 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 v. Mohd. Vajahath Hussain @ Fasi, (2011) 2**

"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."

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 and it would not be possible for the insurance company to make recoveries later.

The Tribunal had failed to award any amount for loss of love and affection. Therefore, an addition of Rs. 1,00,000/- is made for loss of love and affection and Rs. 10,000/- more is allowed for transportation. The Tribunal has already allowed Rs. 1,00,000 for loss of consortium and Rs. 25,000/- for funeral expenses. The total amount payable would be Rs. 9,61,444/-. The Tribunal had awarded Rs. 8,05,000/- which would be deducted and the balance amount i.e. Rs. 1,56,444/- would be payable to the claimants in the same ratio as allowed by the Tribunal with interest @ 6% from the date of filing of the appeal till the amount is actually paid. The share of the minor would be deposited in fixed deposit till they attain majority.

The appeal is partly allowed.

(ANITA CHAUDHRY)
JUDGE

July 12, 2017
Gurpreet

Whether speaking/reasoned : Yes
Whether reportable : No