In the High Court of Punjab and Haryana at Chandigarh

1. F.A.O No. 4869 of 2014
Date of Decision: 20.2.2017

Manju Devi and others ......Appellants

Versus

Sanjay Sharma and others ......Respondents

2. F.A.O No. 4870 of 2014

Sunil and others ......Appellants

Versus

Sanjay Sharma and others ......Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. A.K.Yadav, Advocate
for the appellants.

Mr. J.P.Jangu, Advocate
for respondent No. 2.

Mr. Binat Sharma, Advocate
for respondent No. 3.

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ANITA CHAUDHRY, J

I propose to take up both the appeals together as they arise out of an accident which occurred on 25.2.2012. Both the appellants are seeking enhancement of the award passed by the Motor Accident Claims Tribunal, Rewari.

Balwant along with his friend Pawan were proceeding to Dharuhera from Gurgaon on a motor cycle driven by Pawan and Balwant was on the pillion. They were near the Housing Board, Rewari when the bus driven by respondent No. 1 came from behind and hit the motor cycle. Both Balwant and Pawan sustained injuries and they were shifted to a nearby hospital but were declared dead. The accident was witnessed by Ami Lal. The FIR was lodged on the next day. The claimants being the legal heirs filed two separate claim petitioners seeking compensation for the death of Balwant and Pawan.

In the claim petition filed by Manju Devi and others, it was claimed that Balwant was working in Minda Private Limited at Manesar and was earning Rs. 15,000/- per month. The appointment letter and muster roll register was brought on record. The Tribunal took the basic salary recorded in Ex.P-1 as Rs. 5943/- and added the HRA of Rs. 1647/- and took the total salary at Rs. 7140/- per month. It made a deduction of 1/4th and applying the multiplier of 16, assessed the loss at Rs. 10,28,160/-. A sum of Rs. 5,000/- was added for funeral expenses and Rs. 5,000/- towards loss of estate and Rs. 25,000/- was allowed for loss of love and affection and consortium. An award of Rs. 10,63,160/- was passed.

In the claim petition filed by Sunil and others for the death of Pawan, the plea taken by the claimant was that Pawan used to run a photography shop and was earning Rs. 15,000/- per month. They had examined the Namberdar of village and some photographs were produced but the Tribunal rejected the oral statements holding that the owner of the rented shop was not examined nor it was established that his income was Rs. 15,000 – 20,000/- per month or that there was loss to the motor cycle or to the video camera. The minimum wages of Rs. 5,000/- were taken to calculate the loss and considering that the deceased had left behind five dependants, a deduction of 1/4th was made and the annual dependency was taken at Rs. 45,000/- and applying the multiplier of 17, the compensation was calculated at Rs. 7,65,000/-. An addition of Rs. 5,000/- was made towards funeral expenses, Rs. 5,000/- towards loss of estate and Rs. 25,000/- for loss of love and affection and consortium raising the total to Rs. 8,00,000/-.

The submission made on behalf of appellant Manju and others was that Balwant was working with a concern at Manesar and was also getting overtime and the Tribunal did not award any amount for future prospects and a small sum of Rs. 5,000/- was awarded as funeral expenses and Rs. 5,000/- for loss of estate and a consolidated amount of Rs. 25,000/- has been awarded for loss of love and affection and consortium whereas it should have been awarded separately and at a higher rate. It was urged that the claimants were six in number and the deduction of only 1/4th had been made which should have been 1/6th.

With respect to the petition filed by Sunil and others it was urged that Pawan was a Photographer and was earning Rs. 15,000/- but the Tribunal had taken the minimum wages and the deduction towards personal expenses was 1/4th whereas there were five dependants. It was submitted that future prospects should have been allowed and a higher amount should have been allowed for funeral expenses, loss of estate, consortium and loss of love and affection.

The submission on the other hand was that the minimum wages have been taken as there was no evidence that the deceased were self-employed or earning any amount and no future prospects should be granted as the matter is under consideration with the Apex Court. It was urged that the deduction towards personal expenses had rightly been made as the claimants have included even the parents of the deceased as the claimants just to increase the number.

It would be useful to refer to ***Sarla Verma v. DTC, (2009) 6 SCC 121*** wherein it was held as under:-

"11. In Susamma Thomas, this Court increased the income by nearly 100%, in Sarla Dixit, the income was increased only by 50% and in Abati Bezbaruah the income was increased by a mere 7%. In view of imponderables and uncertainties, we are in favour of adopting as a rule of thumb, an addition of 50% of actual salary to the actual salary income of the deceased towards future prospects, where the deceased had a permanent job and was below 40 years. [Where the annual income is in the taxable range, the words `actual salary' should be read as `actual salary less tax']. The addition should be only 30% if the age of the deceased was 40 to 50 years. There should be no addition, where the age of deceased is more than 50 years. Though the evidence may indicate a different percentage of increase, it is necessary to standardize the addition to avoid different yardsticks being applied or different methods of calculations being adopted. Where the deceased was self-employed or was on a fixed salary (without provision for annual increments etc.), the courts will usually take only the actual income at the time of death. A departure therefrom should be made only in rare and exceptional cases involving special circumstances."

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's*** case (supra) 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 ***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 SCC 94*** 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."

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. No addition should also be made for future prospects in case of Balwant also as his job was not permanent.

Dealing with the case of Balwant first, the Tribunal had rightly taken the income that was mentioned in the salary certificate.

No change is required in the multiplier or in the deduction which was 1/4th. However, an increase should be given for the amount on the miscellaneous heads. The Tribunal had awarded Rs. 5,000/- for the funeral expenses and Rs. 5,000/- for loss of estate. I would add Rs. 20,000/- for funeral expenses and Rs. 20,000/- for loss of estate. Rs. 75,000/- more is allowed for loss of love and affection for the minor children and Rs. 1,00,000/- is awarded for loss of consortium for Manju Devi. The total comes to Rs. 2,15,000/- which would be payable to appellants in FAO-4869-2014 titled 'Manju Devi and others versus Sanjay Sharma and others'. The above said amount shall be paid with interest @ 6% from the date of institution of the appeal till realization. Share of minors would be deposited in FDR.

Now coming to the case of Pawan, the minimum wages i.e. Rs. 5,000/- were rightly taken. The minimum wages stood at Rs. 4967.29 in July 2012. No change is required in the multiplier or in the deduction made towards personal expenses. No amount should be added for future prospects for the reasons which are disclosed above. However, addition needs to be made on miscellaneous heads. I would add Rs. 20,000/- for funeral expenses and Rs. 20,000/- for loss of estate. Rs. 75,000/- more is allowed for loss of love and affection for the minor children and Rs. 1,00,000/- is awarded for loss of consortium for appellant Sunil. Total of this comes to Rs. 2,15,000/-

which would be payable to appellants in FAO-4870-2014 titled 'Sunil and others versus Sanjay Sharma and others'. The above said amount shall be paid with interest @ 6% from the date of institution of the appeal till realization.

Both the appeals are partly allowed.

(ANITA CHAUDHRY)
JUDGE

February 20, 2017
Gurpreet

Whether speaking/reasoned : Yes
Whether reportable : No