IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 6601 of 2014 (O&M)
Date of Decision: May 19, 2017

Shri Ram General Insurance Co. Ltd.

..Appellant(s)

Versus

Smt. Santosh Kumari and others

..Respondent(s)

with

FAO No. 7749 of 2014 (O&M)

Smt. Santosh Kumari and others

..Appellant(s)

Versus

Kamil and others

..Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Arun Sharma, Advocate for
Mr. T.K. Joshi, Advocate
for the appellant in FAO-6601-2014 and
for respondent no.3 in FAO-7749-2014.

Mr. Aman Vashishth, Advocate for
for the appellants in FAO-7749-2014 and
for respondent nos.1 to 4 in FAO-6601-2014.

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ANITA CHAUDHRY, J.

CM-17828-CII-2014 in FAO-6601-2014

For the reasons set out in the application, same is allowed as prayed for and delay of 64 days in filing the appeal is condoned.

CM-20604-CII-2014 in FAO-7749-2014

For the reasons set out in the application, same is allowed as prayed for and delay of 29 days in filing the appeal is condoned.

MAIN APPEALS:-

These are two appeals, one by the insurance company and the other by the claimants aggrieved by the award dated 02.03.2014, passed by the Motor Accident Claims Tribunal, Yamuna Nagar at Jagadhri.

Sonia was 38 years old and was a Guest Teacher. She met with an accident on 15.08.2012. She died few days later. The claimants are the mother-in-law and three minor children of the deceased. Sonia was getting a salary of Rs.14,400/- per month but the Tribunal took the salary to be Rs.12,000/- holding that she would be spending some amount on herself and would be taking leave. The multiplier of 15 was applied and after making a deduction of 1/4th. A sum of Rs.2,63,890/- was added for actual expenses made on her treatment. A sum of Rs.18,88,890/- was awarded as compensation to the claimants out of which an amount of Rs.50,000/- was payable to petitioner no.1 Santosh Kumari (mother-in-law) on account of loss of love and affection. The remaining amount was to be equally shared by minor children of the deceased.

The submission on behalf of the insurance company is that the amount allowed to the claimants is on the higher side and the deduction should have been 1/3rd as the mother-in-law was not dependent and her husband was alive and she was a pensioner.

On the other hand, the submission of the claimants is that an addition towards future prospects should have been made and the Tribunal had not allowed any amount towards loss of love and affection for the children nor any amount had been allowed for funeral expenses. It was urged that it is the grand mother who would be raising the children and only Rs.50,000/- had been allowed to her for loss of love and affection.

Responding to the arguments, the counsel for the insurance company urges that there should be no addition towards future prospects as the deceased was not a regular employee and was a temporary Guest Teacher and the issue is under examination with the Larger Bench.

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.
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> (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.
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> (3) The above rules are subject to two exceptions :
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> (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
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> (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."

The deceased was not a regular employee. She was a Guest Teacher though working with the government. In these circumstances there can be no addition in the future prospects but the income will be taken as Rs.14,400/- and considering the number of the claimants, which are three children, the deduction would be 1/4th and the amount of compensation thus calculated would be Rs.10800 x 12 x 15 = 19,44,000/-.

The deceased had remained in the hospital and some amount should have been allowed for the attendant as well as for transportation, therefore, I would make the following additions:-

Amount of compensation using the multiplier method	:	Rs.19,44,000/-
Medical bills	:	Rs.2,63,890/-
Funeral expenses	:	Rs.25,000/-
Loss of love & affection for the children	:	Rs.1,00,000/-
Attendant charges	:	Rs.10,000/-
Loss of love and affection for petitioner no.1	:	Rs.50,000/-

The total of above comes to Rs.23,92,890/-. The Tribunal had allowed Rs.18,88,900/-, which would be deducted and the remaining amount of Rs.5,03,990/- would be payable to the children of the deceased with interest @ 6% from the date of filing of the appeal.

Appeal filed by the claimants is partly allowed and the appeal filed by the insurance company is dismissed.

(ANITA CHAUDHRY)
JUDGE

May 19, 2017
sunil

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No