IN THE HIGH COURT OF PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

FAO No.8424 of 2014 (O&M)
Date of decision: 28.03.2017

Sanno Parveen and others ...Appellants

Versus

Ramdeen and others ...Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Ms. Deepa Jain, Advocate,
for the appellants.

Mr. Rajbir Singh, Advocte,
for respondent no.3.

ANITA CHAUDHRY, J.

C.M.No.22837-CII of 2014

Prayer in this application is to condone delay of 14 days in filing the appeal.

For reasons stated in the application, which is supported by an affidavit, the same is allowed and delay of 14 days in filing the appeal is condoned.

FAO No.8424 of 2014

This is claimant's appeal, seeking enhancement in the award dated 04.04.2014, passed by the Motor Accident Claim Tribunal, Faridabad.

Jakir Hussain was 23 years old when he met with an accident on 04.08.2012. He was stated to be running a consultancy firm and was earning Rs.35,000/- per month. The Tribunal held that there was no evidence to show that he was a consultant or was earning Rs.35,000/- per month but since he was educated, his monthly income was taken to be Rs.10,000/- per month. Applying the multiplier of 18 and making a deduction of 1/3rd, the compensation was calculated at Rs.14,40,000/-. A sum of Rs.25,000/- was added for loss of consortium.

Counsel for the appellant has urged that the income was taken on the lower side but the argument has to be rejected as oral statements are not enough to give a finding if the deceased was running a consultancy firm, there could have been ample material which could have been produced to show the amount of fees he was receiving from different firms. The record, the bank details, the income tax returns etc. could have been produced, therefore, I am not inclined to make any change, so far as the income is concerned.

Counsel for the appellant has urged that with time, the income would have been grown and the deceased was young in age and, therefore, an increase towards future prospects should have been added.

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 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."*

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. There are no exceptional or extraordinary circumstances in the case.

The deduction was correctly taken as 1/3rd, the multiplier was also correctly applied. However, I find that there are several heads upon which the Tribunal failed to award any compensation and I would award the following:-

1	Loss of Consortium	Rs. 75,000-00
2	Loss of Estate	Rs. 1,00,000-00
3	Funeral expenses	Rs. 25,000-00
4	Loss of love and affection for the minor child	Rs. 1,00,000-00

The total of the above comes to Rs.3,00,000/- .

As a result, the appeal is partly allowed and the award is accordingly modified. The appellants would be entitled to the above amount in the same ratio as that was allowed by the Tribunal with interest at the rate of 6% from the date of filing of the appeal till realization.

March 28, 2017 **(ANITA CHAUDHRY)**
nt **JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No