

In the High Court of Punjab and Haryana at Chandigarh

F.A.O No. 688 of 2015 (O&M)

Date of Decision: 31.7.2017

Vashla Devi and others

.....Appellants

Versus

Rajesh Kumar and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Rajeev Dev Sharma, Advocate
for the appellants.

Mr. Daljeet Singh Kalhon, Advocate
for respondent No. 2.

Mr. Rajbir Singh, Advocate
for respondent No. 3.

ANITA CHAUDHRY, J

This is the claimants' appeal seeking enhancement in the award dated 5.5.2014 passed by the Motor Accident Claims Tribunal, Pathankot.

Tilak Raj was 50 years old and was working with Kay Kay Engineering Works at Pathankot. He was returning from work on his cycle when he met with an accident. The claimants could not lead evidence to show his income. The Tribunal took his income to be Rs. 4800/- per month notionally, made a deduction of 1/4th and applied the multiplier of 13 and calculated the loss at Rs. 5,61,600/-. Rs. 1,00,000/- was allowed to all the family members for loss of love and affection. Rs. 50,000/- was allowed for loss of consortium and Rs. 10,000/- as funeral expenses. An award of Rs. 7,21,000/- was passed.

The submission on behalf of the appellants is that the income

has been taken on the lower side. The counsel submits that the deceased

was a Foreman and the income should have been taken as that of a skilled person and addition of future prospects should have been made and the deduction should have been at least 1/6th and the amount allowed for loss of consortium and loss of love and affection for the children and funeral expenses was on the lower side. He also submits that they should have been awarded costs and also transportation expenses.

The submission on behalf of the insurance company is that there was no evidence that the deceased was working with a private concern or was qualified and the deduction would be 1/4th as per *Sarla Verma v. DTC, (2009) 6 SCC 121*. The counsel further argued that there can be no addition towards future prospects since there was no evidence that he was a permanent employee.

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:-

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.

The minimum wages in Punjab in 2012 stood at Rs. 5200/- per month for unskilled worker and for semi skilled the minimum wages were Rs. 5980/-. The Tribunal had taken the income at Rs. 4800/- which was lower than the minimum wages. Taking the income to be Rs. 5980/- as that of a semi skilled worker and the deduction of 1/4th as per **Sarla Verma's** case (supra), the amount available with the family would be Rs. 4485/- and the compensation would be Rs. 4485 x 12 x 13 = 6,99,660/- and

the following additions are made:-

	<i>(in Rs.)</i>
Loss of love and affection for the children	1,00,000/-
Loss of consortium	1,00,000/-
Funeral expenses	25,000/-
Transportation	10,000/-
Costs of litigation	15,000/-
Total	2,50,000/-

The total of this comes to Rs. 9,49,660/-. The Tribunal had awarded Rs. 7,21,000/- which would be deducted and the remaining amount i.e. 2,28,660/- would be paid with interest @ 6% from January 2015 till the amount is actually paid. The amount would be initially paid by the insurance company and they will be entitled to recover the same from the owner as ordered by the Tribunal.

The appeal is partly allowed.

(ANITA CHAUDHRY)
JUDGE

July 31, 2017
Gurpreet

Whether speaking/reasoned : Yes
Whether reportable : No