

In the High Court of Punjab and Haryana at Chandigarh

**CROSS OBJECTIONS-209-CII-2015 IN/AND
F.A.O No. 246 of 2015
Date of Decision: 16.5.2017**

HDFC ERGO General Insurance Company Ltd.Appellant

Versus

Jasbir Kaur and othersRespondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Sanjeev Goyal, Advocate
for the appellant.

Mr. Gaurav Goel, Advocate
for respondents No. 1 to 6/cross-objectors.

ANITA CHAUDHRY, J

The appeal has been filed by the insurance company. The cross-objections have been preferred by the claimants. Both are aggrieved of the award dated 3.9.2014 passed by the Motor Accident Claims Tribunal, Fatehgarh Sahib.

Some facts would be necessary. Gurinder Singh was 28 years old when he met with an accident on 11.9.2012. Hardeep Singh had a cement store at the Bus Stand Sanghol. Kuldeep Singh used to run a shop at the Bus Stand, Sanghol. Jasbir Singh was standing in front of the shop of Hardeep Singh. Gurinder Singh was going towards the bus stand on the motor cycle and was a little ahead of Hardeep Singh's shop when a truck with 10 tyres driven by respondent No. 1 came from behind and the driver turned the truck towards the left side towards the *kacha* berm and then all of

turned turtle and Gurinder Singh came under the truck and died on the spot. The driver of the truck fled away from the scene. Kuldeep Singh and Jasbir Singh remained on the spot while Hardeep Singh went to the police station to lodge the FIR.

It was pleaded that Gurinder Singh was running a commercial establishment and was working as a Foreman/Blacksmith and earning Rs. 30,000/- per month.

The Tribunal rejected the plea that Gurinder Singh had income of Rs. 30,000/- per month and took the notional income to be Rs. 10,000/- per month and made a deduction of 1/4th and made an addition of 30% to the income and applied the multiplier of 17 to calculate the loss to Rs. 19,89,000/-. A sum of Rs. 25,000/- was added for funeral expenses, Rs. 25,000/- for loss of estate and Rs. 25,000/- for loss of consortium raising the total to Rs. 20,64,000/-. The liability was placed on all the respondents jointly and severally.

The submission on behalf of the appellant is that when the notional income was taken then there could be no addition towards future prospects and the deceased was self employed and the minimum wages even for the skilled labourer in 2012 were less than Rs. 5,000/- per month and for the highly skilled labourer the minimum wages were a little higher than Rs. 5,000/- per month and the income has been taken on the higher side. It was urged that the deceased had left behind his widow and one child but the claimants were parents and married sister and now the mother of the deceased had died.

The submission on behalf of the cross-objector was that compensation was inadequate and the deceased had left behind his widow

and a minor daughter, aged parents and two sisters and the deduction should have been 1/10th instead of 1/4th. It was urged that the amount allowed for loss of consortium is on the lower side and the addition towards future prospects should have been 50% as the deceased was only 28 years old.

Responding to the arguments, counsel for the insurance company had submitted that in the presence of father, the mother would not be dependant on the son and the mother of the deceased had now died and the only dependent claimants were the widow and the minor child and the deduction should have been 1/3rd.

The claimants had pleaded that the deceased was running a commercial establishment and was also working as a Foreman and they had introduced a copy of the proceedings book maintained by the Gram Panchayat to show that Rs. 16,000/- had been paid as erection charges of a shed in November 2011. This document is signed by Bahadur Singh who was the then Sarpanch. No evidence was produced to prove the income. The Tribunal had taken the income on notional basis at Rs. 10,000/- per month which was on the higher side. The minimum wages for unskilled labourer in Punjab in 2012 were stood at Rs. 5200/- per month and for semi skilled upper, the minimum wages were Rs. 5980/- per month and for the highly skilled it would be a little higher which would be taken as Rs. 6500/- per month. The notional income which was taken was on the higher side. Therefore, the income which the deceased would earn would not be more than Rs. 6500/- per month.

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."*

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 wrongly made the deduction of 1/4th as the dependants were the widow and the minor child. I would make a deduction of 1/3rd and the calculations would be Rs. 4334 x 12 x 17 = 8,84,136/-. To this a sum of Rs. 1,00,000/- should be added for loss of consortium, Rs. 1,00,000/- for loss of love and affection for the child and Rs. 50,000/- for loss of estate raising the total to Rs. 11,34,136/-. The Tribunal had awarded Rs. 20,64,000/-. The amount payable by the insurance company would be Rs. 11,34,136/-, if not already paid, after deduction of income tax, with interest at the rate of 6% per annum to the widow and child of the deceased only, in the ratio of 70:30. The share of the minor would be deposited in fixed deposit till she attains majority.

The appeal is allowed and the cross-objections are dismissed.

**(ANITA CHAUDHRY)
JUDGE**

May 16, 2017
Gurpreet

Whether speaking/reasoned	:	Yes
Whether reportable	:	No