Before Anita Chaudhary, J.

HARBANS KAUR — *Appellant*

versus

JEET RAM — *Respondent*

FAO No. 39 of 2012

April 28, 2017

Motor Vehicle Accident Claim Tribunal Act — S. 166 — Addition in future prospects to be made only in exceptional circumstances — Sukhdev Singh about 40 years of age died in an accident an 04.04.2009 — The claimant failed to produce any document to show that deceased owned only land — Or he had taken any land for cultivation — Oral statement not accepted — Income accessed as per minimum wages in Punjab in 2009 — Future prospects not added.

Held that there was no material before the Court to held that the deceased was an agriculturist. It could have been easily proved by producing the Jamabandis. The claimants failed to place on record any document. Therefore deceased was rightly taken as a labourer as there was no evidence with respect to his educational qualifications. No bank accounts or return were placed on reco9rd. the minimum wages in Punjab in the year 2009 were Rs.3, 302/- per month. Therefore income can be taken as Rs. 3, 302/- p.m instead of Rs. 3,000/- p.m.

(Para 5)

Further held that future prospects cannot be added unless there is cogent and convincing evidence and that future prospects had no correlation to the price indexing or inflation.

(Para 9)

Further held that there are no exception or extraordinary circumstances in the case and I do not propose to make any addition for future prospects, even there is no evidence. The matter has been referred to the larger Bench and it would not be possible for the insurance company to make recoveries.

(Para 10)

J.S. Khiva, Advocate
for the appellant.

Sukhdarshan Singh, Advocate
for respondent no.4-insurance company.

ANITA CHAUDHARY, J.

(1) This is the claimant's appeal seeking enhancement in the award dated 05.04.2011 passed by the Motor Accident Claims Tribunal, Mansa.

(2) Sukhdev Singh died in an accident which occurred on 04.04.2009. He was 40 years old and was stated to be an agriculturist and owned 27 Kanals of land. It was pleaded that he had taken 5 acres of land for cultivation and his monthly income was Rs.25,000/-. The claimant is his widow. The Tribunal noted that the claimant had failed to produce any document to show that the deceased owned any land or that he had taken any land for cultivation. The oral statement was not accepted and the income was taken as Rs.3,000/- per month. After making a deduction of 50%, the dependency was taken as Rs.1,500/-per month. The multiplier of 15 was applied and the compensation was calculated as Rs.2,70,000/-. A sum of Rs.5,000/- was added for loss of love and affection, Rs.5,000/- for funeral expenses and Rs.5,000/- for loss of consortium. The amount was to be paid by the insurance company with interest @ 7.5% per annum. An award of Rs.2,85,000/- was passed.

(3) The submission on behalf of the appellant is that the deceased was an agriculturist and the trial Court had ignored the statement of the claimant and there should have been an increase of 30% for future prospects and the amount awarded on the miscellaneous heads was also on the lower side.

(4) The submission on the other hand was that when the widow was the only claimant, no amount could be awarded for loss of love and affection and there was no evidence that the deceased owned any land and the income was taken as that of a labourer and the amount was awarded on miscellaneous heads keeping the price index of that year.

(5) There was no material before the Court to hold that the deceased was an agriculturist. It could have been easily proved by producing the Jamabandis. The claimants had failed to place on record any document. Therefore, the deceased was rightly taken as a labourer as there was no evidence with respect to his educational qualifications. No bank accounts or returns were placed on record. The minimum wages in Punjab in the year 2009 were Rs.3,302/- per month.

Therefore, the income can be taken as Rs.3,302/- per month instead of Rs.3,000/-per month.

(6) So far as the addition towards future prospects is concerned, in the case ***Reshma Kumari*** versus ***Madan Mohan***[1] the three Judge Bench of Supreme Court reiterated the view taken in ***Sarla Verma*** versus ***DTC***[2] 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.

(7) Further, the divergence of opinion in ***Reshma Kumari & Ors*** versus ***Madan Mohan & Anr.***[3] and ***Rajesh & Ors.*** versus ***Rajbir Singh & Ors.***[4] was noticed by the Supreme Court in another judgment in ***National Insurance Company Ltd.*** versus ***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."

(8) Para nos. 27 and 28 of ***Union of India and Anr.*** versus ***Raghubir Singh (dead) by Lrs. Etc.***[5], reproduced in para no.17 of ***Safiya Bee*** versus ***Mohd. Vajahath Hussain @ Fasi***[6] 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

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[1] (2013) 9 SCC 65
[2] (2009) 6 SCC 121
[3] (2013) 9 SCC 65
[4] (2013) 9 SCC 54
[5] (1989) 2 SCC 754
[6] (2011) 2 SCC 94

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*** versus ***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*** versus ***State of West Bengal,*** (1975) 3 SCC 198, decided by a Division Bench of five Judges, in preference to ***Bhut Nath Mate*** versus ***State of West Bengal,*** (1974) 1 SCC 645 decided by a Division Bench of two Judges. Again in ***Indira Nehru Gandhi*** versus ***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*** versus ***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*** versus ***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*** versus ***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*** versus ***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*** versus ***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*** versus ***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. versus ***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.

(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 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

(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."

(9) A Single Bench of Delhi High Court in '***Narinder Bishal And Anr.*** versus ***Sh. Rambir Singh and Ors.*** decided on 20.2.2008, held that future prospects cannot be added unless there is cogent and convincing evidence and that future prospects had no correlation to the price indexing or inflation.

(10) There are no exceptional or extraordinary circumstances in the case and I do not propose to make any addition for future prospects, even there is no evidence. The matter has been referred to the Larger Bench and it would not be possible for the insurance company to make recoveries.

(11) Considering the income to be Rs.3,302/- per month and deducting 50% towards personal expenses, the amount available for the claimant would be Rs.1651/- x 12 x 15 = Rs.2,97,180/-. To this a sum of Rs.1,00,000/- should be added for loss of consortium and Rs.25,000/- as funeral expenses, which raises the total to Rs.4,22,180/-.

(12) The Tribunal had awarded Rs.2,85,000/-, which would be deducted and the remaining amount of Rs.1,37,180/- would be payable to the appellant by the insurance company with interest @ 6% from July, 2012.

(13) The appeal is partly allowed.

Amit Aggarwal