
(2005) 09 AHC CK 0334
In the Allahabad High Court

Mohd. Shakir Ali and Others

APPELLANT

Vs

United India Insurance Co. Ltd.

RESPONDENT

Date of Decision : 22-09-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Constitution of India, 1950 — Article 141

Citation : (2006) 1 ACC 709

Hon'ble Judges : Yatindra Singh, J; R.K. Rastogi, J

Bench : Division Bench

Judgement

R.K. Rastogi, J.—All these applications have arisen out of a common judgment and order dated 6th July, 2005 passed in F.A.F.O. Nos. 665, 666, 667, 668, 669, 670 and 671 of 2001 and Cross Appeal Nos. 202203, 202202, 202197, 202198, 202199, 202200 and 202201 of 2004. Since a common law point is involved in all these review applications; we have heard them together and are deciding them by a common order.

2. The relevant facts of these cases have been stated by us in our judgment dated 6th July, 2005 delivered in the aforesaid F.A.F.Os. and cross-appeals. It may be mentioned that a Maruti Van had met with an accident on 15th May, 1999. All the occupants of the Van, who were bachelors, had died on the spot. Their heirs, who are their parents, etc., filed claim petitions. Taking into consideration the respective income of the deceased persons as well as this fact that they were bachelors, dependency of the claimants was assessed to be 1/3rd of their income; and according to the age of the claimants appropriate multipliers were applied. The only ground on which the review has been sought is that there should have been only 1/3rd deduction in respect of the expenses of the deceased and dependency of the claimants should have been assessed to be 2/3rd of their income and not 1/3rd (as was done in the above judgment) and so this judgment and order should be reviewed.

3. We have heard Mr. Piyush Mishra for the applicants and Mr. V.C. Dixit for the

opposite party, Insurance Company.

4. The learned Counsel for the applicants cited before us a ruling of the Hon''ble Apex Court in the case of Giyan Chand Jain and Anr. v. Permanand and Ors. reported in 1 (2003) ACC 149 (SC) : 2003 (1) TAC 490 (SC) and contended that in this case an unmarried person aged about 26 years had died and age of the father and the mother was 55 and 48 years respectively and in this case after deduction of 1/3rd income towards personal expenses of the deceased, the remaining 2/3rd income of the deceased was determined as loss of dependency. It was contended that in view of this ruling of the Hon''ble Apex Court, only 1/3rd deduction should have been made in respect of the income of the deceased persons and the remaining 2/3rd portion of their income should have been awarded as compensation after applying appropriate multiplier.

5. The learned Counsel for the applicants also referred to Article 141 of the Constitution of India in which it has been provided that the law declared by the Supreme Court is binding on all Courts. He also cited before us another ruling of the Hon''ble Apex Court in Karnataka State Road Transport Corporation Vs. Ashrafulla Khan and Others, , in which it has been held that the High Court is required to enforce rule of law and it cannot pass an order or direction contrary to what has been enjoined by law. He also cited before us another ruling of the Hon''ble Apex Court in Shiv Shakti Coop. Housing Society, Nagpur Vs. Swaraj Developers and Others, , on the law of interpretation, in which it has been provided that it is well settled principle of law, that the Court cannot read anything into a statutory provision which is plain and unambiguous. His contention was that there is a provision in the Second Schedule of the Motor Vehicles Act for reducing the amount of compensation by 1/3rd in consideration of the expenses which the victim had incurred towards maintaining himself, had he been alive, and so there was no question of reducing this amount by 2/3rd. He also cited before us a ruling of the Punjab and Haryana High Court in Ajit Kaur v. Kulwinder Singh and Ors. reported in 1996 (2) T.A.C. 82. In this case, the deceased was bachelor aged about 20 years and he was milk vendor having income of Rs. 900 per month. The High Court was of the view that he was likely to be married after five years and so his contribution towards his parents was assessed to be Rs. 600 per month for a period of five years and thereafter it was reduced to Rs. 300 per month from the anticipated time of his marriage. He also cited before us a ruling of Orissa High Court in Sri Braj Mohan Jena and Ors. v. Haripada Bayan and Anr. reported in 1996 (2) T.A.C. 71. In this case, the deceased was aged about 16 years and had done Matriculation. His probable income was fixed by the High Court to be Rs. 750 per month and regarding his contribution towards his parents the following observations were made in para 6 of the judgment:

Ordinarily, the 1/3rd of the gross income has to be deducted towards personal expenses of the deceased and 2/3rd is to be taken as the contribution for the family. Calculated on that basis, the deceased would have contributed Rs. 500

per month. It would be unpragmatic to hold that there would have been absolute consistency in the contribution. With the passage of time, the needs of the deceased was likely to go up and thereby contribution for the parents would have decreased. No arithmetical formula can be adopted to arrive at the exact figure. In the matters of this nature probabilities and speculations have their own role. The Hilieu the social backdrop, the sphere to which the claimants and the deceased belong and the arena in which they function and such other subsidiary factors that govern their lives are also to be taken into consideration. Abstaining from precise calculation, it can be assessed that the contribution would have been Rs. 350 per month and Rs. 4,200 per year.

6. The learned Counsel for the opposite party, Insurance Company, on the other hand, cited before us another ruling of the Hon''ble Apex Court In Donat Louis Machado and Ors. v. Ravindra and Ors. 2 (2000) ACC 602 (SC) : 2000 (1) T.A.C. 208 (S.C.). In this case a journalist aged about 31 years, who was bachelor, had died and claimants were his father and sister. In this case, Hon''ble Supreme Court has taken the view that the deceased would have spent 2/3rd of his earning on his own family which he would have raised for himself and assessed the dependency of the claimants to be only 1/3rd of his income. The learned Counsel for the Insurance Company contended that in this ruling, Hon''ble Apex Court has given cogent reasons for fixing the dependency of the parents and sister to 1/3rd of the amount only and has observed:

It can easily be visualised that the claimants who are the parents and unmarried sister and who are dependent on him would have got atleast 1/3rd amount as he would have spent the rest 2/3rd amount of his earnings on his own family which he would have raised and on himself.

7. He further contended that in the ruling of Hon''ble Apex Court in Gyan Chand Jain and Anr. v. Permanand and Ors. (supra), though the deceased was bachelor, yet the above aspect of the case has not been considered. Relevant portion of the observations of the Hon''ble Apex Court is as under:

We do find a small infirmity in the order of the Tribunal. The income of the deceased was determined at Rs. 1,638 p.m. The Tribunal erred in determining the total loss of dependency at Rs. 1,000 p.m. The same should have been Rs. 1,100 per month and as only 1/3rd was to be deducted towards the personal expenses of the deceased.

8. It was submitted by the learned Counsel for the opposite party that this aspect of the case, that where the deceased was unmarried and was of marriageable age, 2/3rd deduction should be made from his income when the claimants are his parents, as laid down by the Hon''ble Apex Court in the case of Donat Louis Machado and Ors. v. L. Ravindra and Ors. (supra), has not been considered in the case of Gyan Chand (supra), and so the view taken by the Hon''ble Apex Court in the case of Donat Louis Machado and Ors. (supra), in which reasons have also been given for making deduction of 2/3rd amount from

the income shall prevail when no reasons have been given in the ruling in Gyan Chand Jain (supra), for making deduction of 1/3rd amount only in case of death of the deceased, who is unmarried.

9. He further submitted that the rulings of Punjab and Haryana High Court in Ajit Kumar v. Kulwinder Singh and Ors. and Orissa High Court in Sri Braj Mohan Jena and Ors. v. Haripada Bayan and Anr. (supra), cited by the applicants also support his contention that where a bachelor had died the dependency of the parents should be assessed to 1/3rd of his income.

10. The learned Counsel for the applicants on the other hand submitted before us that the ruling, of Hon''ble Apex Court in Donat Louis Machado's case, in which parents' dependency was assessed to be 1/3rd of the income of the deceased was delivered on 5th December, 1997 and the ruling of the Hon''ble Apex Court in Gyan Chand Jain's case (surpa), was delivered on 3rd December, 2002 and since it is a subsequent ruling, this ruling should be followed and the earlier ruling taking a contrary view should be presumed to have been overruled.

11. We have considered the case law on this point. It was laid down by a Full Bench of this Court in Gopal Krishna Indley Vs. 5th Addl. District Judge, Kanpur and Others, , that when there is a conflict between two decisions of Hon''ble Apex Court by the Judges of equal strength the decision of the latter Bench shall be binding. It may be mentioned that in this case, the facts were that the Bench of two Hon''ble Judges of the Supreme Court had held in Ram Swarup Rai v. Smt. Lilawati Devi 1980 A.L.J. 651, that the benefit of exemption from applicability of the provisions of the LLP. Act No. 13 of 1972, for a period of ten years, shall be available to those buildings only which are constructed after enforcement of the above Act, but in the subsequent ruling in Ratan Lal Shinghal Vs. Smt. Murti Devi, , the Division Bench of two Hon''ble Judges held that this benefit of exemption from applicability of provisions of the U.P. Act No. 13 of 1972, shall be available for a period often years to those buildings also which had been constructed prior to enforcement of the above Act, but had not completed that period of ten years on the date of enforcement of the Act. Since there was conflict between these two decisions, the Full Bench of this Court held that the latter ruling shall be binding and observed in parapara 27 of the judgment that:

We would only content ourselves by saying that since we are bound by the latter decision of the Supreme Court, we must follow the same. To us, it appears that the latter decision has impliedly overruled the earlier.

12. This controversy again came for consideration before the Full Bench of this Court in the case of Ganga Saran Vs. Civil Judge, Hapur, Ghaziabad and others, . In this case, the facts were that a Full Bench of this Court had laid down in Jupiter Chit Fund (Pvt.) Ltd. Vs. Dwarka Diesh Dayal and Others, , that in view of the U.P. Amendment of Section 115 of the CPC no revision lies in the High Court against an order passed by the District Judge or the Addl. District Judge in an appeal or revision. This view was affirmed by the Supreme Court in Vishesh

Kumar Vs. Shanti Prasad, and in Miss. Nishi Maghu and Others Vs. State of Jammu and Kashmir and Others, . However, the Hon''ble Supreme Court in Qamaruddin v. Rasul Baksh 1990 A.W.C. 308 S.C, without reference to the U.P. Amendment of Section 115, C.P.C. and without referring to its earlier rulings in the cases of Vishesh Kumar and Vishnu Autar (supra), held that a revision was maintainable in the High Court even against an Appellate Order passed by the District Judge and so a controversy arose as to which ruling of Hon''ble Supreme Court should be followed. This controversy was described by the Full Bench in the following words:

7. One line of decision is that if there is a conflict in two Supreme Court decisions, the decision which is later in point of time would be binding on the High Courts. The second line of decisions is that in case, there is a conflict between the judgments of Supreme Court consisting of equal authorities, incidence of time is not a relevant factor and the High Court must follow the judgment which appears to lay down law elaborately and accurately.

13. Their Lordships referred to a Full Bench ruling of the Punjab and Haryana High Court in Indo Swiss Time Limited Vs. Umrao and Others, , in which it was observed that:

8...

Now the contention that the latest judgment of Co-ordinate Bench is to be mechanically followed and must have pre-eminence irrespective of any other consideration does not commend itself to me. When judgments of the superior Court are of co-equal Benches and, therefore, of matching authority then their weight inevitably must be considered by the rationale and the logic thereof and not by the mere fortuitous circumstances of the time and date on which they were rendered. It is manifest that when two directly conflicting judgments of the superior Court and of equal authority are extant then both of them cannot be binding on the Courts below. Inevitably a choice, though a difficult one, has to be made in such a situation. On principle it appears to me that the High Court must follow the judgment which appears to it to lay down the law more elaborately and accurately. The mere incidence of time whether the judgments of co-equal Benches of the superior Court are earlier later is a consideration which appears to me as hardly relevant.

14. This ruling of the Full Bench of the Punjab and Haryana High Court was followed by the Full Bench of the Bombay High Court in The Special Land Acquisition Officer (I), Bombay and Another Vs. The Municipal Corporation of Greater Bombay, . Relying upon both these Full Bench rulings of the Punjab and Haryana High Court and the Bombay High Court, the Full Bench of this Court in Ganga Saran's case (supra), after pointing out this fact that Hon''ble Supreme Court in Qamaruddin's case (supra), had not taken into consideration the U.P. Amendment of Section 115, C.P.C. observed that the rulings of the Hon''ble Apex Court in Vishesh Kumar and Vishnu Autar's cases, which have taken the above

amendment into consideration lay down the law accurately, and so these earlier rulings are binding and not the subsequent ruling in Qamaruddin's case. Their Lordships observed in paras 9 and 10 of the judgment as under:

9. In such a situation it cannot be held that the case of Qamaruddin (supra), lays down the law accurately Further it also cannot be held that the decision of the Supreme Court in Qamaruddin's case, overruled the decision of Full Bench of this Court which as noticed already, has been specifically affirmed in two decisions of the Supreme Court. It would not be reasonable to say that even though Qamaruddin's case does not notice U.P. Amendment Act and the earlier decision of Supreme Court approving the Full Bench decision of this Court, it must be deemed to have dissented or departed from earlier decisions or that it has overruled the Full Bench decision of this Court. It goes without saying that even the decision of the Supreme Court must be understood reasonably. It would not be reasonable to say that the Supreme Court would depart or dissent from its earlier decision without even referring to them or without even referring to the relevant provisions of law.

10. For the above reasons it must be held that the decision of Supreme Court in Qamaruddin's case 1990 A.W.C. 308 (supra), to the extent, it holds that revision against an appellate or revisional order passed by the District Court is maintainable u/s 115, C.P.C. (as amended by UP Act 31/78) to the High Court does not state the law accurately or overrule the decision of the Full Bench of this Court in Jupiter Chit Fund (Pvt.) Ltd. Vs. Dwarka Diesh Dayal and Others, , particularly when it has specifically been approved by the two earlier decisions of the Supreme Court.

15. Now, it is to be seen that according to the above ratio of the Full Bench ruling of this Court in Ganga Saran's case (supra) in case of conflict between two rulings of the Hon''ble Apex Court of co-equal Benches, that ruling which lays down law more accurately shall be binding. In the present case, the position is that in the ruling of Donat Louis Machado (supra), the Hon''ble Apex Court has given reasons for awarding 1/3rd amount of the income of the deceased to his parents as compensation. This view is also supported by the rulings of the Punjab and Haryana High Court and the Orissa High Court cited by the learned Counsel for applicants himself. Actually this point does not appear to have been pressed before the Hon''ble Apex Court in the case of Gyan Chand Jain (supra), nor the ruling in Donat Louis Machado's case (supra), appears to have been cited in that case. Hence, the Hon''ble Apex Court simply noticing this fact that there was a calculation mistake in deducting the 1/3rd amount of salary from Rs. 1,638 observed that 2/3rd of the amount of Rs. 1,638 does not come to Rs. 1,000 as held by the Tribunal and that it should be Rs. 1,100 after 1/3rd deduction. The point that the deceased bachelor, would not have contributed more than 1/3rd of his salary for his parents after his marriage, which was the ratio of the ruling in Donat Louis Machado's case (supra), does not appear to have been pressed before Hon''ble Apex Court in Gyan Chand Jain's case (supra)

and so we are of the opinion that in view of Full Bench ruling of this Court in Ganga Saran v. Civil Judge, Hapur (supra), the earlier ruling of Hon''ble Apex Court in Donat Louis Machado's case (supra), which lays down the law more accurately, is binding upon this Court and so this ruling should be followed. All the aforesaid F.A.F.Os. have been decided following the law laid down in Donat Louis Machado's case (supra) and as such the judgment does not suffer from any error or infirmity.

16. In this view of the matter, the review applications have got no force and they are liable to be dismissed.

17. All the review applications are accordingly dismissed.