

State of Himachal Pradesh and ors. Vs. Smt. Shanta Devi and ors.

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Court : Himachal Pradesh

Decided On : May-10-1989

Reported in : AIR1990HP41,[1989]66CompCas845(HP)

Judge : N.M. Kasliwal, C.J.,; V.K. Mehrotra and; V.P. Bhatnagar, JJ.

Acts : Punjab High Court Rules and Orders - Rules 6, 7 and 8

Appeal No. : F.A.O. (MVA) No. 8 of 1977

Appellant : State of Himachal Pradesh and ors.

Respondent : Smt. Shanta Devi and ors.

Advocate for Def. : A.K. Goel, Adv.

Advocate for Pet/Ap. : D.K. Khanna, Adv.

Judgement :

V.P. Bhatnagar, J.

1. This Full Bench has been constituted pursuant to the following order made on April 12, 1984 by a learned single Judge of this Court in F.A.O. (MVA) No. 8 of 1977 :

'12-4-1984 Present :

Mr. D. K. Khanna, Advocate, for the HRTC

Mr. P. N. Nag, Advocate-General, for the State.

Mr. Inder Singh, Advocate, for the Respondents.

Referred to Full Bench in view of the decision in HRTC v. Jai Ram, ILR (1979) Him Pra 267 : (AIR 1980 Him Pra 16) which requires reconsideration.

April 12, 1984(P. D. Desai), C. J.'

2. The facts which led to the filing of the appeal may first be stated. Bus No. HIL-3952 belonging to the Himachal Pradesh Road Transport, on its way to Shimla, met with an accident on August 20, 1972 at Shegali causing death of one of its occupant, namely. Dhananjai. The widow Smt. Shanta Devi and two minor sons of the deceased filed a claim in the court of Motor Accident Claims Tribunal, Mandi for a sum of Rs. 1,75,000/-. The Tribunal by its order dated August 30, 1976 awarded compensation amounting to Rupees 1,03,700/-. The appeal, out of which this reference has arisen, has been filed by H.R.T.P.C. and the State of Himachal Pradesh.

3. HRTC v. Jai Ram, ILR (1979) Him Pra 267 ; (AIR 1980 Him Pra 16) is a decision handed over by a Division Bench of this Court. The mode for assessing compensation to be awarded to the dependents and heirs of the deceased in such accidents has been elaborately discussed and guidelines laid down. Simultaneously, Jai Ram also notices the statutory requirement incorporated in Section 110-B of the Motor Vehicles Act, 1939 to the effect that every method of calculation must be treated as subordinate to the necessity of giving a 'just' compensation.

4. At the very outset, Shri D. K. Khanna, learned Counsel for the appellant, has raised a preliminary objection regarding the very validity of order of reference dated April 12, 1984 reproduced above. His argument is twofold : first, that a learned single Judge, as a matter of judicial decorum, propriety and discipline, is ordinarily bound to follow the law laid down by a Division Bench of his own Court and, therefore, should not and cannot, sitting singly, recommend the constitution of

a Full Bench for reconsideration of such a decision; and, secondly, that it is necessary to give reasons, howsoever brief, why the decision of a larger Bench requires reconsideration. The reference before us, according to the learned Counsel, is defective on both counts and hence need not be answered.

5. Taking the second ground of attack first, we are prone to uphold it. Whenever a single Judge is of the view that an earlier decision of the High Court requires reconsideration and proceeds to make a reference to a larger Bench, reasons in support of the aforesaid view must be given in the order of reference. To reiterate, the reference must contain reasons which necessitated the making of it. These reasons when stated in the order itself, will be of immense assistance not only to the Chief Justice for determining the composition and/ or the strength of the larger Bench to be constituted but also to the Judges for the purpose of examining the question involved. It has to be borne in mind that the possibility of the learned Judge who made the reference, and for that matter also of the advocates who assisted him at the time of its making, being not available when the reference finally comes up for hearing cannot be altogether overruled. If so, the very purpose of making the reference would not be precisely known and may get lost due to absence of its base and foundation. Furthermore, the urgency with which the reference is to be listed and heard can also be made out only if reasons prompting it are clearly stated there in.

6. A Full Bench of the Rajasthan High Court apparently found itself in a similar predicament and had this to say in *Mahesh Chand v. State of Rajasthan*, 1985 Cri LJ 301 :

'9. Similarly, we find it difficult to deal with the reference made by Mehta, J. in Mamman Singh's bail application listed at No. 5 above. This is because we have not been able to discover as to what is the question or questions of law which is or are involved in the decision of that application by the learned single Judge, and, so far as the reference order is concerned, it does not give any indication at all as to the nature of the legal controversy which is required to be resolved for a decision on that application. We therefore decline to answer this reference in the manner it has been made, The application of Mamman Singh will also therefore go back to

the learned single Bench for disposal according to law.'

7. We find ourselves in no better position. The reference order has already been reproduced above per verbatim. It is cryptic in nature and throws no light at all about the context in which Jai Ram requires reconsideration. Also, it has not been possible for the learned Counsel appearing on either side to render any assistance in order to enable us to discover the questions which fall for determination, specially the precise nature of difficulty faced by the learned single Judge in not following Jai Ram (AIR 1980 Him Pra 16).

8. For the foregoing reasons, we cannot but decline to answer this reference.

9. As regards the first limb of the argument, the learned Counsel for the appellant has sought support mainly from the law laid down by a Full Bench of the Punjab and Haryana High Court in Pritam Kaur v. Surjit Singh, AIR 1984 Punj and Har 113. In that case, a learned single Judge had made a reference for reconsidering the ratio of an earlier Full Bench decision which was undoubtedly binding on the learned single Judge. It was categorically observed by the second Full Bench in Pritam Kaur (supra) that no question for the reconsideration of the earlier Full Bench decision could arise before the single Bench who was obliged to follow the same. Shri D. K. Khanna also cited Tribhovandas Purshottamdas Thakkar v. Ratilal Motilal Patel, AIR 1968 SC 372; Sitaram Deoba v. Hawadya Piraji, AIR 1976 Bom 1 and Narula Trading Agency v. Commr. of Sales Tax, Delhi, AIR 1981 Delhi 1 (FB), in support of his contention. In our view, the point raised is not free from difficulty. However, we do not feel it necessary to address ourselves to this part of the submission for it can be gone into in another appropriate case if and when required.

10. In view of the above discussion, we accept the preliminary objection raised by the learned Counsel for the appellant and direct, without answering the reference before us, that F.A.O. (MVA) No. 8 of 1977 be now placed before a learned single Judge for final hearing and disposal.