
(2014) 06 KL CK 0211
In the High Court Of Kerala
Case No : M.A.C.A. No. 175 of 2008

Abraham Jacob

APPELLANT

Vs

Mubarak

RESPONDENT

Date of Decision : 25-06-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27
Diplomatic and Consular Officers (Oaths and Fees) Act, 1948 — Section 2, 3
Government of India Act, 1935 — Section 100
Motor Vehicles Act, 1988 — Section 166

Citation : (2015) 1 ACC 79 : (2014) 3 KLT 883

Hon'ble Judges : Harun-Al-Rashid, J; Anil K. Narendran, J

Bench : Division Bench

Advocate : Mathew John (K) and Ajeesh K. Sasi, Advocate for the Appellant;
C.A. Navas and Jacob Murickan, Advocate for the Respondent

Judgement

Anil K. Narendran, J.—The appellant is the petitioner in O.P. (MV) No. 45/2001 on the file of the Additional Motor Accidents Claims Tribunal, Kottayam, a petition filed under S. 166 of the Motor Vehicles Act, 1988, claiming compensation for the injuries sustained by him in a motor accident occurred on 10.5.1999. At the time of accident; the appellant was driving a car bearing registration No. KL-5B-6162 through M.C. Road, from Thiruvananthapuram to Kottayam. It is alleged that, when the car reached near Kilivayal College Junction, a lorry bearing registration No. KL-10-1458 driven by the 2nd respondent came from the opposite direction in a rash and negligent manner and hit the car. In the accident appellant sustained severe injuries. The 1st respondent is the registered owner of the lorry. The 3rd respondent is the insurer of the lorry. The appellant claimed a total compensation of Rs. 10 lakhs. The 1st and 2nd respondents remained ex-parte. The 3rd respondent-insurer filed written statement admitting the insurance coverage of the lorry at the time of accident. But, they contended that, the accident occurred due to the rash and negligent driving of the car by the appellant. According to the 3rd respondent, the accident occurred due to

contributory negligence of the appellant and the compensation claimed under different heads is also exorbitant.

2. The appellant injured was examined as PW 1 and Exts. A1 to A13 were marked on his side. No oral or documentary evidence was adduced on the side of the 3rd respondent-insurer.

3. The Tribunal concluded that the accident occurred due to the rash and negligent driving of the lorry by the 2nd respondent-driver. The Tribunal by award dated 15.6.2007 awarded a total compensation of Rs. 91,900/- to the appellant, together with interest at the rate of 7% per annum, from the date of filing of the petition till realisation. The 3rd respondent was directed to deposit the amount within one month from the date of the award. It is aggrieved by the quantum of compensation awarded by the Tribunal, the appellant-injured is before us in this appeal.

4. During the pendency of this appeal, the appellant filed I.A. No. 2946/2013 to delete the 1st respondent, the registered owner of the lorry, from the party array. By order dated 13.11.2013 that application was allowed, at the risk of the appellant. Later, the appellant filed I.A. No. 285/2014, an application under Order XLI, R. 27 of the Code of Civil Procedure, 1908, to accept as additional documents, a degree certificate dated 23.11.1971 issued by the University of Kerala, certifying that the appellant has passed B.Sc. Botany; a provisional certificate dated 8.10.1978 issued by the University of Kerala certifying that he has passed M. Sc. Botany; and a certificate dated 16.12.2013 issued by the Chief Executive Officer of Buzwair Engineering & Contracting, Doha, Qatar, certifying that, his service was terminated as he could not rejoin service after the accident occurred on 10.5.1999. The 3rd respondent filed counter affidavit to I.A. No. 285/2014 contending, inter alia, that the two degree certificates produced as additional documents will not be of any help to the appellant in getting enhanced compensation and the certificate issued by the employer may not be accepted without proving the veracity of the same.

5. We heard arguments of the learned counsel for the appellant, the learned counsel for the 2nd respondent and the learned Standing Counsel for the 3rd respondent.

6. The learned Counsel for the appellant contended that the Tribunal went wrong in brushing aside Ext. A4 salary certificate issued by the employer and fixing only a meagre sum of Rs. 10,000/- as the monthly income of the injured at the time of accident. The learned counsel further contended that the quantum of compensation awarded by the Tribunal under different heads is grossly inadequate having regard to the injuries sustained and the treatment undergone. Per contra, the learned counsel for the 2nd respondent and the learned Standing Counsel for the 3rd respondent contended that the compensation awarded by the Tribunal under different heads is just and proper and it does not call for any enhancement in this appeal.

7. We have considered the rival submissions made at the Bar and also perused the records, including the additional documents produced by the appellant along with I.A. No. 285/2014.

8. According to the appellant, at the time of accident he was working as a Sales Manager in Buzwair Engineering & Contracting, Doha, Qatar, and earning a monthly income of Qatari Riyal 10,000/- (equivalent to Indian Rupee 1,15,000/-). Ext. A4 is the salary certificate issued by his employer certifying that he is working with them as an employee and his basic salary is Qatari Riyal 10,000/- per month (Indian Rupee 1,15,000/-). Though the salary certificate was marked as Ext. A4, the Tribunal refused to rely on the same stating that it has not been proved as required by law.

9. Ext. A4 is a certificate duly authenticated by the Consular Officer of the Embassy of India at Doha (Qatar), in accordance with the provisions under the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948 (Act No. 41 of 1948). Act No. 41 of 1948 was passed by the Dominion Legislature under S. 100 of the Government of India Act, 1935, as adapted by the India (Provisional Constitution) Order 1947. The Act provides for the administration of oaths by Diplomatic and Consular Officers and prescribes the fees leviable in respect of certain of their official duties. Clauses (a) and (b) of S. 2 of the Act define "Consular Officer" and "Diplomatic Officer", which reads thus;

"2. Definitions:-In this Act,-(a) "Consular Officer" includes consul general, consul, vice-consul, consular agent, pro-consul and any other person authorised to perform the duties of consul-general, consul, vice-consul or consular agent, (b) "Diplomatic Officer" means any ambassador, envoy, Minister, charge d'affaires, or secretary of embassy or legation."

10. Section 3 of the Act deals with the powers of the diplomatic or consular officers to administer any oaths and take any affidavit and also do any notarial act, which reads thus;

" 3. Powers as to oaths and notarial acts abroad:-

(1) Every diplomatic or consular officer may, in any foreign country or place where he is exercising his functions, administer any oath and take any affidavit and also do any notarial act which any notary public may do within a State and every oath, affidavit and notarial act administered, sworn, or done by or before any such person shall be as effectual as if duly administered, sworn or done by or before any lawful authority in a State.

(2) Any document purporting to have affixed, impressed or subscribed thereon or thereto the seal and signature of any person authorised by this Act to administer an oath in testimony of any oath, affidavit or act, being administered, taken or done by or before him, shall be admitted in evidence without proof of the seal or signature being the seal or signature of that person, or of the official character of that person."

11. Therefore, sub-section (1) of S. 3 of the Act confers power on the Indian diplomatic and consular officers in foreign countries to administer any oath and take any affidavit and also do any notarial act which any notary public may do within a State and every oath, affidavit and notarial act administered, sworn or done by or before such diplomatic and consular officers shall be as effectual as if duly administered or done by any lawful authority in a State. Sub-section (2) of S. 3 of the Act lays down that any document purporting to have affixed, impressed or subscribed thereon or thereto the seal and signature of the diplomatic and consular officers authorised by the Act to administer an oath in testimony of any oath, affidavit or act, being administered, taken or done by or before him, shall be admitted in evidence without proof of the seal or signature being the seal or signature of that person, or of the official character of that person. S. 3 of the Act does not dispense with the proof of a document according to law if it is to be used as evidence in a court of law. All that S. 3 does is to enable a court to dispense with the proof of the genuineness of the seal and signatures of a diplomatic or consular officer on a particular document. If the document is otherwise relevant and proved in accordance with law, a copy of the said document duly authenticated in the manner prescribed by the Act can be admitted in evidence.

12. The learned counsel for the appellant-injured brought to our notice the judgment of the Apex Court in Jiju Kuruvila and Others Vs. Kunjujamma Mohan and Others, and paragraphs 27 to 29 of the judgment read thus;

"27. The last question relates to just and proper compensation. Both the Tribunal and the High Court have accepted that the deceased was 45 years of age at the time of accident; he was working as manager, Freeman Management Corporation, New York Branch, U.S.A., and was getting a monthly salary of 2500 US Dollars. The High Court accepted that the deceased, as per conditions of service, could have continued the employment upto the age of 65 years.

28. Ext. A6, is a certificate issued by the employer of deceased, i.e., Freeman Management Corporation, U.S.A. dated 23rd April, 1990 which shows that his annual salary was 30,000 US Dollars. He was in their employment for 9 years and had an excellent standing and his employment was of a permanent nature. The deceased would have continued in service upto the age of 65 years. Ext. A6 was attested by Notary Public and counter signed by the Consulate General of India, New York, as per S. 3 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948.

29. On the basis of the aforesaid annual income and exchange rate of Rs. 17.30 per US Dollar as applicable in April, 1990 (Ext. A7), the annual income of the deceased if converted in Indian currency will be $30,000 \times 17.30 = 5,19,000/-$ at the time of death."

13. In Jiju Kuruvila's case (supra) Ext. A6 certificate issued by the employer showed that, the deceased was in the employment of Freeman Management

Corporation, USA, for 9 years and that employment was of a permanent nature the deceased would have continued in service upto the age of 65 years. But, in the case on hand, there is nothing in Ext. A4 certificate to show that the employment of the appellant, who was aged 48 years at the time of accident, was of a permanent nature and that, but for the accident he would have continued in employment upto 60 or 65 years. Neither the nature of employment nor the date of entry in service is mentioned in Ext. A4 certificate. As rightly contended by the learned Standing Counsel for the 3rd respondent, relying on the judgment of this Court in Valsamma Vs. Binu Jose, , in the case of a non-permanent employment in Gulf countries with uncertainty regarding continuance, it is not safe to rely on that income as the basis for calculating the compensation payable under different heads. Moreover, the appellant, who is only a Postgraduate in Botany, has no case that he had acquired any prior experience or special qualification to hold the post of Sales Manager in engineering and contract field. In such circumstances, though Ext. A4 is a document authenticated in accordance with S. 3 of the Act, we find ourselves unable to take the monthly income of Qatari Riyal 10,000/- (equivalent to Indian Rupee 1,15,000/-) shown in that certificate as the basis for calculating the compensation payable under different heads.

14. Ext. A10 is a copy of the passport of the appellant which indicate that he went to Doha in the year 1998 and returned on 18.4.1999. Ext. A11 certificate issued by the Asst General Manager, the Lord Krishna Bank Ltd., Kottayam Branch, shows that he was having a NRE (Non-Resident External) term deposit to the tune of Rs. 49,04,857/-, as on 31.3.1999. Ext. A12 is another certificate issued by the Manager, Punjab National Bank, Kottayam Branch, certifying that the appellant and his wife Mollykutty were having accounts with them and the balance as on 31.3.1999 was Rs. 36,95,199/-. Exts. A11 and A12 certificates indicate that the appellant was drawing a reasonably good salary from his overseas employment. The case of the appellant that he is a postgraduate holding M. Sc. degree now stands proved by Annexure A and B certificates produced before this Court along with I.A. No. 285/2014. Annexure C, a document authenticated in accordance with S. 3 of the Act, is another certificate issued by the Chief Executive Officer of Buzwair Engineering & Contracting, Doha, Qatar, certifying that, the service of the appellant was terminated as he could not rejoin service after the accident occurred on 10.5.1999. The above documents produced along with I.A. No. 285/2014 are accepted on record as additional documents on the side of the appellant. Considering the facts and circumstances of the case and the evidence on record, we find that the monthly earning capacity of the appellant, as on the date of accident, can be reasonably fixed at Rs. 40,000/-, as against Rs. 10,000/- fixed by the Tribunal in the impugned award, for calculating compensation under different heads.

15. The medical records indicate the injuries sustained by the appellant in the accident and the treatment he had undergone. He sustained abrasion 3 x 2 c.m. on right wrist with contusion and deformity, abrasion 3 x 2 c.m. with contusion

over right forehead. X-ray showed fracture right radius and fracture calcaneus. Ext. A9 discharge card issued from Pushpagiri Hospital indicate that he was admitted in that hospital on 10.5.1999 with volar barton communitied fracture of right radius with fracture right calcaneus. He was treated with JESS external fixator with closed K-nail fixator application and below-knee cast applied and was discharged on 22.5.1999 with advise to review after six months for removal of fixator and plaster application. Ext. A8 is another discharge card issued from Pushpagiri Hospital, which indicate that he was again admitted in the hospital on 23.6.1999 for implant removal and thereafter below knee cast was again applied and was discharged on 25.6.1999.

16. The Tribunal awarded a sum of Rs. 18,000/- under the head pain and suffering, Rs. 500/- towards compensation for damage to clothing, Rs. 2,000/- towards transportation expenses, Rs. 19,400/- towards treatment expenses, Rs. 1,500/- towards bystander expenses, Rs. 500/- for extra nourishment and Rs. 10,000/- towards loss of amenities. In the facts and circumstances of the case, we find that the compensation awarded by the Tribunal under the above heads is just and proper and there is no scope for any enhancement.

17. Towards loss of earning the Tribunal awarded Rs. 30,000/- as compensation for a period of three months, treating his monthly earning capacity as Rs. 10,000/-. As evident from Ext. A9 discharge card, he was treated with JESS external fixator with closed K-nail fixator application and below-knee cast applied and was discharged on 22.5.1999 with advice to review after six months for removal of fixator and plaster application. Later, as evident from Ext. A8 discharge card, he was again admitted in the hospital for implant removal and thereafter below-knee cast was again applied and was discharged on 25.6.1999. In the claim petition, the appellant claimed loss of earning from 10.5.1999 to 10.9.1999, i.e., for a period of four months. Considering the injuries sustained and the treatment undergone, the appellant is entitled for compensation towards loss of earning for a period of four months, treating his monthly earning capacity as Rs. 40,000/-, as re-fixed in this judgment. Therefore, we re-fix the compensation towards loss of earning as Rs. 1,60,000/- ($40,000 \times 4 = 1,60,000$) and the appellant is granted an additional compensation of Rs. 1,30,000/- under the above head ($1,60,000 - 30,000 = 1,30,000$). According to the appellant, the injuries sustained in the accident resulted in permanent disability and discomfort, which adversely affected his earning capacity as well as enjoyment of amenities in life. Ext. A5 is the disability certificate issued by a Consultant Orthopedic Surgeon, who certified that on 4.4.2000 he had examined the appellant for assessing disability and found that he has a permanent disability of 12% due to fracture distal radius left hand and fracture calcaneus. The Tribunal discarded Ext. A5 disability certificate stating that it does not reveal the reason for disability or any problem developed following the fracture and granted only a lump sum amount of Rs. 10,000/- as compensation for permanent disability. The medical records indicate the injuries sustained by the appellant in the accident. He sustained fracture right radius and fracture calcaneus. As evident from Ext.

A9 discharge card he was admitted in hospital with volar barton comminuted fracture right radius with fracture right calcaneus and treated with JESS external fixator with closed K-nail fixator application and below-knee cast applied. Later, as evident from Ext. A8 discharge card, he was again admitted in the hospital for implant removal and thereafter below-knee cast was again applied. Considering the nature of the injuries sustained and the treatment undergone, we find it appropriate to fix the percentage of permanent disability as 5% as against 12% certified in Ext. A5. Therefore, we re-fix compensation for permanent disability as Rs. 3,12,000/- ($40,000 \times 12 \times 13 \times 5/100$) and the appellant is granted an additional compensation of Rs. 3,02,000/- under the above head. ($3,12,000 - 10,000 = 3,02,000$)

In the result, this appeal is allowed in part, modifying the award passed by the Tribunal, and the appellant is granted an additional compensation of Rs. 4,32,000/- ($1,30,000 + 3,02,000 = 4,32,000/-$) with 7% interest from the date of filing of the petition before the Tribunal till the date of realisation of the amount. The award dated 15.6.2007 of the Additional Motor Accidents Claims Tribunal, Kottayam, in O.P. (MV) No. 45/2001 is modified to the extent indicated above. The 3rd respondent is directed to deposit before the Tribunal the additional compensation granted to the appellant, within three months from the date of this judgment, failing which the appellant will be at liberty to realise the same by executing the award. No order as to costs.