
(2016) 07 KL CK 0054
In the High Court Of Kerala
Case No : M.A.C.A. No. 343 of 2011

National Insurance Company Ltd.

APPELLANT

Vs

Ramla

RESPONDENT

Date of Decision : 20-07-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 163, Section 166, Section 173

Citation : (2017) AAC 307 : (2017) 1 ACC 616 : (2017) 1 ACC 272 : (2016) 4 KerLJ 257 : (2016) 4 TAC 796

Hon'ble Judges : Mr. C.T. Ravikumar and Mr. K.P. Jyothindranath, JJ.

Bench : Division Bench

Advocate : Sri. E.M. Joseph, Advocate, for the Appellant; Sri. Zubair Pulikkool, Advocate, for the Respondent Nos. 1 to 4

Final Decision : Disposed Off

Judgement

K.P. Jyothindranath, J. - M.A.C.A. No. 343 of 2011 is filed by the National Insurance Company Ltd./the 3rd respondent in O.P.(M.V.) No. 792 of 2008 on the files of the Court of Motor Accidents Claims Tribunal, Vatakara. Cross Objection No. 77 of 2011 is filed by the respondents/claimants in the above appeal.

2. A motor vehicle accident occurred on 10.5.2008 near Orkkatteri Service Station. The deceased Ismail sustained very grievous injuries in the said motor vehicle accident and succumbed to the injuries. The wife, children and aged father of the deceased moved the above referred claim petition before the Tribunal for a total compensation of Rs. 25,00,000/-, alleging negligence on the side of the driver of the Jeep as cause of the accident and further arraigned the driver, owner and insurance company of the said vehicle as respondent Nos.1 to 3 respectively. The Tribunal found that the accident occurred due to the negligence of the driver of the Jeep and awarded a total compensation of Rs. 11,83,000/-. The Tribunal considered the monthly income of the deceased as Rs. 12,000/-. Aggrieved by the quantum of compensation awarded by the Tribunal, the Insurance Company filed M.A.C.A. No. 343 of 2011. The claimants also filed

the Cross Objection raising a contention that the compensation awarded is not a just compensation and the quantum assessed is on a lower side.

3. When the appeal came up for hearing the learned counsel for the Insurance Company submitted before us that here is a case where the deceased was allegedly working abroad. It is the further submission that without considering the fact that the employment and income of the deceased are not properly proved, the Tribunal considered monthly income of Rs. 12,000/- for assessment purpose. The learned counsel also drew our attention to the decision of this Court in Valsamma v. Binu Jose (2014 (1) KLT 10). It is the submission that while the income of a person working abroad is considered, the uncertainty in the job and the high expense that will be incurred for his personal maintenance are to be considered by the Court. It is also the submission that when uncertainty regarding the job is therein, the Tribunal erred in considering an income treating him as working abroad.

It is also the submission that in this case, the Tribunal adopted Rs. 12,000/- as the monthly income without any basis. Hence, an interference by this Court on that regard is necessary.

4. The learned counsel for the Cross Objectors/claimants submitted before us that in this case, the salary certificate issued by the employer abroad, which is duly attested by the Consulate was produced before the Tribunal. It is also the submission that in this case, PW2 is none other than the employer of the deceased and he proved the employment certificate. It is the submission of the learned counsel that when there is reliable materials to show that the income of the deceased was 2500 Qatar Riyals which will be equivalent to about Rs. 30,000/-, the Tribunal should have taken the said amount as his monthly income. To buttress his argument, he drew our attention to the decision in Jiju Kuruvila v. Kunjujamma Mohan ((2013) 9 SCC 160). There, the Apex Court relied upon a document which was attested by the Diplomatic and Consular Office. It is also the submission of the learned counsel before us that the compensation awarded on various heads like "loss of consortium", "loss of love and affection" and "funeral expenses" are on a lower side. It is the submission of the learned counsel that the deceased was aged only 31 years at the time of death whereas, the first claimant was aged only 22 years. The second claimant was aged only three years whereas, the 3rd claimant was aged only 9 months. The 4th claimant is the aged father of the deceased who was fully depending upon the earnings of the deceased.

It is also the submission that following the dictum laid down in Sarla Verma v. Delhi Transport Corporation (2010 (2) KLT 802 (SC)) the Tribunal should have only deducted 25% of the total income of the deceased towards personal expenses.

5. After hearing the learned counsel on both sides we perused the impugned award as well as the marked documents in this case.

6. In this case, the liability of the Insurance Company and the negligence aspect

are not in dispute. The only question to be considered is what will be the quantum of compensation that is, just compensation? Ext. A6 is a salary certificate issued by A1-Rawabi Food Centre, Doha which certified that the deceased Ismail was an employee of the said firm and was drawing a monthly salary of 2500 Qatar Riyals.

It was seen attested/counter signed by the Assistant Consulate Officer attached to the Embassy of India, Doha. The claimants also seen produced the passport of late Ismail which shows that at the time of the accident he was aged 31 years. The said document also shows that from 2004 onwards he was in Qatar. Work Visa is also seen stamped therein. Before the Tribunal, it can be seen that, PW2 claims that he was the employer of the deceased. According to him, the deceased was given a monthly salary of Rs. 30,000/-. He even got a case that it was his net salary given after deducting the expenses. Now, appreciating the materials and evidence before the Tribunal, it can be seen that there is not even a challenge from the Insurance Company to the effect that he was not working at Qatar. The only dispute is regarding the nature of the work that is, whether it is a permanent employment or not as well as what will be the actual salary that he was drawing. The case of the Cross Objectors is that Ext. A6 was executed as required under Section 3 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948. Surely, by virtue of the said Act, the officers mentioned in Section 3 of the said Act can do all the acts that can be done by a notary under Section 8 of the Notaries Act. Section 8 of the Notaries Act states as follows:-

"8. Functions of notaries.-(1) A notary may do all or any of the following acts by virtue of his office, namely:-

(a) verify, authenticate, certify or attest the execution of any instrument;

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Section 3 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948 is as follows:-

"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."

7. In this respect, in paragraph 23 of the decision in Jiju Kuruvila's case (supra) the Supreme Court held as follows:-

"23. Ext. A-6 is a certificate issued by the employer of the deceased i.e. Freeman Management Corporation, USA dated 23.4.1990 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 up to the age of 65 years. Ext. A-6 was attested by the notary public and countersigned by the Consulate General of India, New York, as per Section 3 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948."

Thus, it can be seen that a document attested in front of the Consulate can be taken as a document to ascertain salary of a person employed abroad, without formal proof.

8. In this case, apart from the said document, it can also be seen that there is evidence of PW2. The Tribunal, after verifying the bank account of the witness, opined that there is nothing to disbelieve the fact that he is the employer of the deceased. Ext. A5, passport reveals that it is stamped with work Visa. If that be so, we feel that there is reliable and cogent evidence to show that the deceased was working abroad and was drawing a salary as shown in Ext. A6, that is, he was drawing a salary of 2500 Qatar Riyals which will be almost equal to 30,000 Indian Rupees. PW2 got a case that it was the net salary after deducting the expenses. We are not inclined to accept the said evidence of PW2. A person working abroad will have a higher salary as well as a higher expense for his personal maintenance. Surely, the learned counsel for the Insurance Company highlighted that there is some uncertainty attached to the nature of the job. Even though the person is belonging to the age group below 40 years, under such circumstances, we are not inclined to take the future prospects for the calculation purpose. Thus, Rs. 30,000/- is considered as his monthly income for calculation of loss of dependency. Surely, he had to spend a huge amount for his personal expenses like accommodation, food, dress etc. The passport of the deceased shows that in between July, 2004 and January, 2008 he came five times to India. In the case of a person working abroad "break even" will be much high. In other words, irrespective of the income, a minimum amount will be required for travel fare, accommodation, food etc. In this regard except the oral evidence of PW2 there is no other evidence before the Court to show that the employer provided accommodation and food. Neither the posting order of the deceased nor any other material produced to show that the employees under PW2 were given accommodation and food.

Under such circumstances, 3rd of the total income is deducted towards personal

expenses in this case. Thus, the amount available towards the dependency will be Rs. 10,000/-. That is, he will be able to spend only Rs. 10,000/- for the benefit of the family. Thus, following the schedule attached to the decision in *Sarla Verma v. Delhi Transport Corporation* (2010 (2) KLT 802 (SC)) the multiplier available will be "16". Then the amount available towards the dependency will be Rs. 19,20,000/- (10,000 x 12 x 16). It can be seen that already Rs. 11,52,000/- is seen awarded by the Tribunal on this head. Thus, additional amount available on this head will be Rs. 7,68,000/-. On a perusal of the schedule attached to the impugned award it can be seen that an interference in respect of the compensation awarded under "loss of consortium", "loss of love and affection" and "funeral expenses" is also warranted.

9. The first claimant before the Tribunal, who is the wife of the deceased, was aged only 22 years at the time of the death of her husband. Considering the age of the first claimant she will be entitled to Rs. 1,00,000/- towards "loss of consortium" in the light of the decision in *Rajesh v. Rajbir Singh* (2013(3) KLT 89(SC)). The Tribunal granted only Rs. 10,000/- on this head. Hence, an additional amount of Rs. 90,000/- is granted on this head. This amount will be exclusively entitled to the wife of the deceased. Similarly, towards "loss of love and affection" also only Rs. 10,000/- is seen granted. In this case, the 2nd and 3rd claimants were minors at the time of his death. They were aged only 3 and 9 years and the father of the deceased, who is also a claimant was aged 90 years. In such circumstances, towards loss of love and affection an additional sum of Rs. 90,000/- is also awarded. Towards "funeral expenses" only a sum of Rs. 3,000/- is seen awarded.

In the light of the decision in *Rajesh's* case (supra) an additional amount of Rs. 22,000/- is awarded on this head. Thus, the claimants will be entitled for a total additional compensation of Rs. 9,70,000/-.

10. It is submitted before us that already Rs. 1,00,000/- each was permitted to be withdrawn by the first claimant and the 4th claimant before the Tribunal by this Court as per order dated 27.6.2011. No specific apportionment is seen made by the Court below. At the time of the accident the age of the 4th claimant was 90. Considering all those aspects, we feel that the amount can be apportioned as follows:-

As already stated, the 4th claimant before the Tribunal already received a sum of Rs. 1,00,000/-. Over and above the same, he will be entitled for another sum of Rs. 1,00,000/- from the total compensation. This amount will include the compensation towards loss of love and affection also. That is, the insurance company shall produce a Draft/Cheque for Rs. 1,00,000/- (Rupees One Lakh only) in the name of the 4th claimant before the Tribunal (father of the deceased) and the said Cheque/Draft shall be released to the 4th claimant. Rs. 1,00,000/- awarded under the head "loss of consortium" and the interest thereon will be exclusively entitled to the first claimant. The balance amount of the total compensation shall be shared in the ratio 30:35:35 in between

claimants 1, 2 and 3. It is made clear that since the compensation is apportioned as above, we have not made any specific order in respect of the amount awarded on the head "loss of love and affection" to the minor children and father of the deceased. Thus, the additional compensation of Rs. 9,70,000/- awarded by this Court shall be paid by the Insurance Company with interest at the rate of 8% from the date of petition till realisation. The compensation due to the Cross Objectors/claimants shall be paid by the Insurance Company within four months from the date of receipt of a copy of this judgment. It is further made clear that the compensation entitled to the minors shall be deposited in their names respectively by the Tribunal with maximum benefits till they attain majority. If any release of amount from the interest accrued on the deposit in the name of the minors is required, a specific application for the same shall be filed before the Tribunal and after application of mind, appropriate orders can be passed by the Tribunal. The amount due to claimants 1 and 4 shall be released to them.

In the result, M.A.C.A. No. 343 of 2011 is dismissed. Cross Objection No. 77 of 2011 is allowed as stated above. No costs.