(2015) 05 KL CK 0110

In the High Court Of Kerala

Case No : M.A.C.A. No. 457 of 2012

Paloth Chirakkathodi Mohammed and Others — APPELLANT

Vs

M.K. Hassan and Others — RESPONDENT

Date of Decision : 26-05-2015

Acts Referred:

Citation : (2015) 05 KL CK 0110

Hon'ble Judges : P.N. Ravindran, J;Anu Sivaraman, J

Bench : Division Bench

Advocate : P. Samsudin, for the Appellant

Judgement

P.N. Ravindran, J—The appellants are the claimants in O.P. (M.V.) No. 282 of 2009 on the file of the Motor Accidents Claims Tribunal, Manjeri. They are the parents, wife and minor children respectively of P.C. Abdul Rasheed who passed away on 12.3.2008 on account of the injuries sustained by him in a motor accident that took place at about 12 noon on the same day. The deceased was riding a motor bike along with his son (the fourth claimant) when a stage carriage bus bearing registration No. KL-10-V-3999 driven by the first respondent, owned by the second respondent and insured by the third respondent hit the motor bike from behind, as a result of which the deceased fell down and was run over. It is stated that P.C. Abdul Rasheed died on the way to hospital. The claimants contended that the deceased was employed at Riyadh in Saudi Arabia for the past 20 years and was drawing a monthly salary of Rs. 50,000/- corresponding to 4800 Saudi Riyals and the accident happened while he had come on leave. They contended that the first respondent was driving the stage carriage bus in a rash and negligent manner and at an uncontrollable speed and that the accident happened solely on account of the rash and negligent driving of the first respondent.

2. Upon receipt of summons, the third respondent insurer entered appearance and filed a written statement admitting the existence of a valid insurance policy. They however contended that the accident took place on account of the rash and

negligent driving of the motor bike by the deceased. The owner and the driver of the bus did not enter appearance, though they were served. With the result, they were set ex-parte. Before the Motor Accidents Claims Tribunal the wife of the deceased (the third claimant) was examined as PW1 and Exts. A1 to A12 were produced and marked. No evidence oral or documentary was adduced on the side of the respondents. The Motor Accidents Claims Tribunal considered the rival contentions and awarded a total compensation of Rs. 7,00,000/-. The third respondent insurer was directed to pay the compensation which was apportioned among various claimants together with interest at 9% per annum from the date of petition till realisation. The claimants have, aggrieved by the quantum of compensation awarded by the Motor Accidents Claims Tribunal, filed this appeal.

3. We heard Sri. P. Samsudin, learned counsel appearing for the appellants and Sri. K.B. Ramanand, learned counsel appearing for the third respondent. Sri. P. Samsudin, learned counsel appearing for the appellants contended relying on Ext. A11 salary certificate that the deceased was earning a monthly salary of Rs. 50,000/- corresponding to 4800 Saudi Riyals, that the accident took place while he was in India on leave, that PW1 has deposed to the said fact and therefore, the Motor Accidents Claims Tribunal erred in brushing aside Ext. A11 certificate and in holding that the claimants have not proved that the deceased was employed in Saudi Arabia or that he was earning a sum of Rs. 50,000/- per month as salary. The learned counsel contended that the mere fact that Exts. A10 and A12 do not disclose any remittance after 11.10.2006 is by itself not a reason to hold that the deceased was not earning any income, when the employer has in Ext. A12 certified that he was being paid a salary of 4800 Saudi Riyals till 19.12.2007. Referring to the averments in I.A. No. 1721 of 2015 filed today, as also page No. 12 of Ext. A9(c) passport, the learned counsel appearing for the appellants contended that the entries therein would reveal that the deceased possessed a re-entry visa valid till 18.4.2008 and that in Ext. A11 certificate dated 12th Shahban 1431 corresponding to 24.7.2010 the employer has stated that after availing annual leave, the deceased left for India as per exit and re-entry visa No. 61672980 on 19.12.2007, that the employer has not stated in the certificate that the employment of the deceased stood terminated and therefore, there is no reason why the salary mentioned in Ext. A11 certificate should not be relied on for computing the loss of dependency. The learned counsel also contended relying on the decision of the Apex Court in Rajesh v. Rajbir Singh [2013 (3) KLT 89 (SC)] that the amount of compensation awarded for funeral expenses, loss of love and affection and loss of consortium is meagre and is liable to be suitably enhanced. Per contra, Sri. K.B. Ramanand, learned counsel appearing for the third respondent insurer contended that apart from the ipse dixit of the claimants there is no material to establish their contention that the deceased was gainfully employed in Saudi Arabia and was earning a salary of 4800 Saudi Riyals at the time of the accident and in such circumstances, no exception can be taken to the impugned award.

4. We have considered the submissions made at the Bar by learned counsel

appearing on either side. We have also gone through the pleadings and the materials on record including the lower court records which have been called for. Ext. A9(c) which is the latest among the passports held by the deceased discloses that he had returned to India on 19.12.2007. Page 10 of Ext. A9(c) passport discloses that he had arrived at Calicut Airport on that day. In page 12 of Ext. A9(c) passport an exit stamp is affixed. Though the learned counsel appearing for the appellants relied on page 12 of Ext. A9(c) passport as translated by an Assistant Professor in the Research Department of Arabic, Maharajas College, Ernakulam and contended that page 12 contains an exit and re-entry visa entitling the deceased to go back to his place of employment before 18.4.2008, in view of the fact that all the exit and re-entry visas are stickers pasted on the passport held by the deceased, we are not persuaded to hold that the endorsements in the handwriting of someone at page 12 of Ext. A9(c) passport constitute an exit and re-entry visa. The learned counsel for the appellants was also not in a position to explain the reason why an endorsement regarding exit and re-entry visa is made in the handwriting of someone at page 12 of Ext. A9(c) passport, when previously there were no such endorsements. Though Ext. A11 certificate states that the deceased left Saudi Arabia on 19.12.2007 with an exit and re-entry visa bearing No. 61672980, the entry referred to by the employer is the very same entry occurring in page 12 of Ext. A9(c) passport, which as stated earlier, is an endorsement made in the handwriting of someone. The employer has not stated that he has seen the original of the passport or verified the authenticity and genuineness of the endorsements made on page 12 of Ext. A9(c) passport. The employer would have issued the certificate based on the information furnished by the claimants that the deceased had left for India with an exit and re-entry visa on 19.12.2007. It is evident from Ext. A11 certificate that the deceased was employed in Al Babtain Power and Telecommunication Company as an Office Secretary only till 19.12.2007. There is no statement in Ext. A11 certificate regarding the length of the annual leave. The claimants have no case that the deceased was eligible for an annual leave of four months. It is common knowledge that those employed in the middle east do not enjoy four months'' annual leave at a stretch. The mere fact that exit and re-entry visas are generally valid for a period of four months is therefore not a reason to hold that the deceased continued to be in the employment of Al Babtain Power and Telecommunication Company even after 19.12.2007. We are therefore of the considered opinion that no reliance can be placed on Ext. A11 certificate or the endorsements at page 12 of Ext. A9(c) passport to hold that the deceased was at the time of his death an employee of Al Babtain Power and Telecommunication Company, earning a monthly salary of 4800 Saudi Riyals corresponding to Rs. 50,000/-.

5. It is relevant in this context to note that in Ext. A10 series of pass books, no remittance has been made in the accounts operated by the deceased after 11.10.2006. Ext. A12 statement of accounts shows that the last remittance was

on 8.6.2006. In such circumstances, no exception can be taken to the finding entered by the Motor Accidents Claims Tribunal that no reliance can be placed on Ext. A11 to hold that the deceased was earning a monthly salary of 4800 Saudi Riyals corresponding to Rs. 50,000/- at the time of his death. Consequently, we hold that the award of compensation under the head loss of dependency does not merit any interference. We however notice that the Motor Accidents Claims Tribunal has awarded only a sum of Rs. 3,000/- towards funeral expenses, Rs. 10,000/- towards loss of consortium to the third appellant wife and Rs. 10,000/- under the head loss of love and affection to the three minor children, who are appellants 4 to 6. The Apex Court has in Rajesh v. Rajbir Singh [supra] held that in the case of death of the husband at least Rs. 1,00,000/- should be awarded for loss of consortium to the wife. The deceased in the case on hand was aged 44 years at the time of his death. The third appellant, his wife, was at that time aged 37 years. In the light of the law laid down by the Apex Court in Rajesh v. Rajbir Singh [supra] we are of the opinion that the third claimant is entitled to be awarded the sum of Rs. 90,000/- as compensation under the head loss of consortium over and above the sum of Rs. 10,000/- awarded by the Motor Accidents Claims Tribunal. Likewise, the three minor children of the deceased namely appellants 4 to 6 are in our opinion entitled to a sum of Rs. 1,00,000/- as compensation under the head loss of love and affection, as awarded by the Apex Court in Rajesh v. Rajbir Singh [supra]. We accordingly award a sum of Rs. 90,000/- to appellants 4 to 6 as additional compensation under the head loss of love and affection. The Apex Court has in the aforesaid decision also held that towards funeral expenses, a sum of Rs. 25,000/- should be awarded. The Motor Accidents Claims Tribunal has in the instant case awarded only a sum of Rs. 3,000/-. Therefore under that head we award a further compensation of Rs. 22,000/- to the appellants. We also notice that the Motor Accidents Claims Tribunal has not awarded any amount as compensation for pain and suffering. Even in case of instantaneous death, a nominal amount of Rs. 10,000/- is generally awarded as compensation for pain and suffering. The deceased in the case on hand did not die instantaneously. He died after he was hospitalized about five hours after the accident. In such circumstances, we are inclined to award a sum of Rs. 25,000/- as compensation for pain and suffering.

We accordingly hold that the appellants/claimants are entitled to an additional compensation of Rs. 2,27,000/- over and above the compensation awarded by the Motor Accidents Claims Tribunal. The third respondent insurer shall deposit the additional compensation awarded by this Court together with interest thereon at 9% per annum from the date of petition till the date of remittance, within two months from today. From the amount thus deposited, the third appellant, the wife of the deceased will be entitled to be paid the sum of Rs. 90,000/- towards loss of consortium together with the interest thereon. The balance amount shall be deposited in the joint names of appellants 4 to 6 till all of them attain the age of majority. The parties shall bear their costs in this Court.

