

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**APPEAL NO.905 OF 2006
IN
ADMIRALTY SUIT NO.3 OF 2003
WITH
NOTICE OF MOTION NO.2650 OF 2016
IN
APPEAL NO.905 OF 1006
WITH
CHAMBER SUMMONS NO.1677 OF 2016**

1. Motor Vessel Mangalam a Motor Vessel flying the Indian Flag registered at Mumbai at present plying between various Ports on therefore Western Coast of India owned by Vikrant Ispat a Unit of Grasim Industries ltd.
2. Vikrant Ispat a Unit of Grasim Industries Ltd a Public Limited Company registered under the Indian Companies Act, 1956 having its registered office at Birlagram Nagda – 456 331 and also at Ahura Centere, 1st floor, 82 Mahakali Cavers Road, Andheri East Mumbai – 400 093.

... Appellants.
(Orig. Defendant
Nos.1 and 2)

Versus

1. Alice Elizabeth D'Souza
Aged 49 years, Occupation: Service
residing at 67/F, Railway Quarters,
Vile Parle East, Mumbai – 400 057.
2. Alwin Mathew D'Souza
Aged 12 years, Occupation: Student,
Minor through his Mother and
natural guardian
Mrs. Elizabeth D'Souza

residing at 67/F, Railway Quarters,
Vile Parle East, Mumbai – 400 057.

3. Binny Ship Management Limited
a Public Limited Company
registered under the Indian Companies
Act, 1956 having its registered Office
at 101, Maker Chambers VI, 220
Nariman Point, Mumbai – 400 021.

... Respondents.
(Orig. Plaintiff Nos.
1 & 2 and Defendant
No.3)

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Mr. Tariq Baig a/w ms. N. Suman i/b. M/s. Bhatt & Saldonah for
the Appellants.
None for the Respondents.

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***CORAM : Smt. Vasanti A Naik &
Sarang V. Kotwal, JJ.***

DATE : 13th December, 2017.

ORAL JUDGMENT : (Per: Smt. Vasanti A. Naik, J.)

By this appeal, the appellants-Motor Vessel Mangalam and Vikrant Ispat have appealed against the judgment of the learned Single Judge dated 08.11.2006 in Admiralty Suit no.3/2003, decreeing the suit in terms of prayer clause (a) and (e) and directing the appellants to pay compensation to the respondents-legal heirs of Mr. Edwin D'Souza who expired on 13.09.1999 during the course of his employment as a Chief Engineer (First Class).

Few facts giving rise to the appeal are stated thus:

The respondents-legal heirs of Mr. Edwin D'Souza had filed

admiralty suit no.3/2003 for a prayer against the appellants for grant of compensation to the tune of Rs.45,60,000/- towards the death of Mr. Edwin D'Souza in the course of the employment. The appellant no.1 is a vessel flying the Indian flag of which the appellant no.2- Vikrant Ispat-the original defendant no.2 is the owner. The original defendant no.3 Binny Ship Management Ltd. is the agent of Vikrant Ispat. Plaintiff no.1, Alice is the widow of Edwin D'Souza and plaintiff no.2 Alwin is the son of Edwin. According to the plaintiffs, Edwin, was working as a Chief Engineer (First Class) with Vikran Ispat and had expired on a vessel due to heart attack on 13.09.1999. It is pleaded in the suit that the death of Mr. Edwin D'Souza occurred due to lack of proper care and attendance after Edwin suffered a heart attack on 13.09.1999. According to the plaintiffs, Edwin was a member of the Maritime Union of India and Vikrant Ispat is the member of the Indian national ship owners association. It is pleaded that an agreement was executed between Maritime Union of India of which Edwin was a member and the Indian national ship owners association relating to the terms and conditions of the services of officers working on the vessels. The plaintiffs based the claim on MUI-INSA agreement and specially clause 103 thereof to claim a sum of Rs.45,60,000/- towards lump-sum compensation with interest. It was the case of the plaintiffs that as per the said clause in MUI-INSA agreement, if an employee dies during the course of employment, including the death by heart attack or a death due to any proven cause, the company would be liable to pay lump-sum compensation at the rate of 110 months basic wages subject to the minimum of Rs.9,00,000/-. It was the case of the plaintiffs that

since at the relevant time Edwin was receiving wages at the rate of Rs.42,000/- per month, he was entitled to 110 months basic wages amounting to Rs.45,60,000 towards compensation.

The defendants-appellants filed a written statement and denied the claim of the plaintiffs. It was denied that Vikrant Ispat was a member of the Indian ship owners association. It was pleaded by the defendants that the MUI-INSA agreement would not apply to Edwin. It was pleaded that since Edwin was receiving a consolidated salary of Rs.42,000/-, the said salary could not be considered as his basic wages. It was pleaded that compensation of Rs.5,00,000/- was offered to the plaintiffs but the same was not accepted by them.

On the aforesaid pleadings of the parties, the learned Single Judge framed the issues and on a consideration of the evidence tendered by the parties held that the plaintiffs had succeeded in proving that they had a cause of action against the defendants and also that they were the only surviving heirs of late Edwin D'Souza under the Indian Succession Act. The learned Single Judge held that the plaintiffs would be entitled to a decree for the sum of Rs.45,60,000/- with interest at the rate of 18% from the date of claim till the date of actual payment. The judgment of the learned Single Judge is appealed against by the appellants.

Mr. Baig, the learned counsel for the appellants submitted that the learned Single Judge ought to have considered the admission of PW-2, the witness of the plaintiff in his cross examination that the basic wages for the post of Chief Engineer,

Class-I, would be Rs. 16,360/- per month. It is stated that the material admission in the cross examination of Mr. S.S. Khan, the witness examined on behalf of the plaintiffs was not noticed by the learned Single Judge while granting the claim of the plaintiffs in the totality. It is submitted that the learned Single Judge has wrongly observed that the defendants has not produced any evidence on record to prove their case. It is stated that the plaintiffs case was shattered in view of the evidence of Mr. S.S. Khan in his cross examination that the basic wages for the post of Chief Engineer, Class-I was Rs.16,360/-. It is submitted that the appointment order of Mr. Edwin D'Souza clearly showed that he was appointed temporarily for two months on consolidated wages of Rs.42,000/- and the said wages could not have been considered as basic wages, more so when clause 12 of the wage scale for trade officers, as provided in the MUI-INSA agreement shows that the basic wages for the post of Chief Engineer, Class-I were 16,360/-. It is submitted that the learned Single Judge has decreed the suit of the plaintiffs-respondents without referring to the wage scale chart in the MUI-INSA agreement and without noticing the material admission in the cross examination of PW-2 Mr. Khan that the basic wages for the post of Chief Engineer, Class-I were Rs.16,360/-. It is submitted that at the most, the plaintiffs would have been entitled to 110 months basic wages at the rate of Rs.16,360/- as applicable at the relevant time, when Mr. Edwin D'Souza had expired in September, 1999.

Neither the respondent nor their counsel were present when the appeal was called for hearing on 11.12.2017 and 12.12.2017

and on both the dates of hearing we had adjourned the matter with a view to grant an opportunity to the respondents to defend the prayers made in the appeal. Despite the grant of two chances none appears for the respondents today also.

On hearing the learned counsel for the appellants and on a perusal of the evidence of the witnesses as also the judgment of the learned Single Judge and the MUI-INSA agreement, it appears that the relevant part of the MUI-INSA agreement was not brought to the notice of the learned Single Judge when the suit was decided. Probably, the admission of PW-2-Mr. S.S. Khan in his cross examination that the basic wages for the post of Chief Engineer, Class-I would be Rs. 16,360/- was also not brought to the notice of the learned Single Judge. The learned Single Judge therefore proceeded on the basis that the defendants-appellants had failed to produce any evidence in support of their case that the basic wages of Mr. Edwin D'Souza would not be Rs.42,000/- and would be 16,360/- per month. We have perused the appointment order of Mr. Edwin D'Souza. The appointment order clearly records that Mr. Edwin D'Souza was appointed for a period of two months on a consolidated salary of Rs.42,000/- per month. Unfortunately, Mr. Edwin D'Souza expired during the period of two months from his temporary appointment. It is not in dispute that as per clause 22 of MUI-INSA agreement that pertains to year 1998-2000, if an employee who is a member of the MUI dies during the course of employment, his heirs would be entitled to compensation at the rate of 110 months basic wages subject to the minimum of Rs.9,00,000/-. Since Clause 22 of the MUI-INSA

agreement would be applicable to the case in hand as Mr. Edwin D'Souza had expired due to heart attack while on the vessel, it would be necessary to consider what basic wages were payable to the post of Chief Engineer, Class-I, the post on which Mr. Edwin D'Souza was working at the time of his death. It would be necessary to consider the wage scale for trade officers, as provided in MUI-INSA agreement. As per the wage scale, the basic wages payable to the post of Chief Engineer, Class-I would be Rs.16,360/- as per item 12 of the wage scale. Apart from the fact that the basic wages payable to the employee are mentioned in the wage scale append to the MUI-INSA agreement, it would be necessary to consider the admission of the witness examined on behalf of the plaintiffs, viz. PW-2-Mr. S.S. Khan who has clearly admitted in his cross examination that at the relevant time the basic wages for the post of Chief Engineer were approximately Rs.16,000/- per month and on a perusal of the MUI-INSA agreement, the witness had stated that the exact basic wages would be Rs.16,360/- per month. Thus the witness examined on behalf of the plaintiffs had admitted that the basic wages for the post of Chief Engineer, Class-I were 16,360/- per month. Possibly, the said admission was not brought to the notice of the learned Single Judge at the time of hearing the admiralty suit. It is apparent from a perusal of the text of MUI-INSA agreement and the wage scale appended thereto, as also the admission of PW-2-Mr. S.S. Khan in his cross examination that the basic wages payable to the post of Chief Engineer, Class-I would be 16,360/-. Hence, the plaintiff had failed to prove that the basic wages of Mr. Edwin D'Souza were Rs.42,000/- per month. In the circumstances of the case, it would be necessary to

hold that the basic wages of Mr. Edwin D'Souza were Rs.16,360/- per month and by considering the said basic wages, it would be necessary to compute the compensation payable to the plaintiffs by applying the multiplier of 110 as the compensation payable for the death of an employee who dies during the course of employment would be the basic wages for 110 months. The amount of compensation payable to the plaintiffs would thus be Rs.17,99,600/- and not Rs.45,60,000/- as held by the learned Single Judge. The appellants would therefore be liable to pay the compensation of Rs.17,99,600/- to the respondents with interest.

It would be necessary to note that at the time of admission of this appeal, by the interim order dated 22.12.2006, the Court had directed the appellants to deposit the entire amount with the Prothonotary and Senior Master of this Court within four weeks and 50 % of the deposited amount was liable to be invested in the fixed deposit account of a nationalised bank and the remaining 50% amount was permitted to be withdrawn by the respondent nos. 1 and 2 subject to furnishing of the solvent surety/security to the satisfaction of the Prothonotary and Senior Master. It is most likely that the respondents must have withdrawn the amount deposited by the appellants in this Court in pursuance of the interim order. In the peculiar facts and circumstances of the case, it would be too harsh to direct the respondents to refund the excess amount withdrawn by the respondents in pursuance of the interim order, as we find that the compensation is reduced to less than 50% than what was granted by the learned Single Judge. Hence though we have held that the respondent nos. 1 and 2-

plaintiffs would be entitled to the compensation of Rs.17,99,600/-, the appellants would not be entitled to recover the amount that is withdrawn by the respondent nos. 1 and 2 in excess of the amount to which they are entitled as per this judgment. It is needless to mention that as a consequence of our findings in this judgment the appellants would be entitled to withdraw the amount that is placed in the fixed deposit account of the nationalised bank.

Hence, for the reasons aforesaid, the appeal is allowed. The judgment of the learned single judge stands modified. The plaintiffs-respondents would be entitled for the compensation of Rs.17,99,600/- along with interest from the date of the claim till the amount was realised. The appellants are permitted to withdraw the amount placed in the fixed deposit account of the nationalised bank. In the circumstances of the case, there would be no order as to costs.

With the disposal of the appeal, notice of motion no.2650/2016 and chamber summons no.1677/2016 also stand disposed of.

(Sarang V. Kotwal, J)

(Smt.Vasanti A Naik, J)