

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 23.01.2018	Pronounced on: 08.02.2018
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Coram:

THE HONOURABLE MR.JUSTICE A.SELVAM
and
THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Civil Miscellaneous Appeal No. 429 of 2016

1. Chitra
2. Selvakumari
3. Manjappan ... Appellants/Petitioners

/versus/

1. J. Sivakumar
2. Universal Sampo,
General Insurance, Co.Ltd,
Chennai-18. ... Respondents/Respondents

PRAYER: Criminal Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the fair and decretal award passed by the learned Principal Subordinate Judge, Vridhachalam dated 15.07.2015 in M.C.O.P.No.344/2011.

For Appellants :Mr. S.Udhayakumar

For 2nd Respondent :Mrs. R.Srividhya

For 1st Respondent :No appearance

J U D G M E N T

[Judgment of the Court was made by Dr.G.JAYACHANDRAN. J.,]

This Memorandum of Appeal is preferred by the petitioners in M.C.O.P.No.344/2011, being unsatisfied with the award passed by Tribunal vide its order dated 15.07.2015.

2. The appellants are the wife, mother and father of one Mohan, who died in the Motor Accident occurred on 13.10.2011 at Four Road Crossing, Vridhachalam Bazaar. Claim petition for

Rs.90,00,000/- was filed on the premises that a lorry bearing Registration Number TN 28 AJ 8051 driven rash and negligently dashed against a motor cycle bearing Registration Number TN 31 AS 5029 stationed by Mohan and ran over him, thereby causing his instant death. The deceased Mohan was the only earning member of the family. He was employed abroad earning monthly income of Rs.90,000/- per month and was on deputation in India during the time of this incident. The first and second respondents are the owner and the insurer of the offending lorry. Considering the present income of the deceased Mohan, his future prospect, loss of love and affection, consortium and other losses, a sum of Rs.90,00,000/- sought as compensation.

3. The first respondent, who is the owner cum driver of the lorry, disputed the contention of the petitioners/appellants through his counter statement, alleging that the accident occurred only due to rash and negligent driving of the deceased Mohan. He had no license to drive the motor vehicle. He drove his Hero Honda Splendor in a rash and negligent manner and hit the lorry. Non-joinder of the owner of the two wheeler and its Insurance Company negates the claim petition. The alleged age and income of the deceased Mohan are denied and the compensation claimed is very excessive.

4. The second respondent under which the lorry was covered under Insurance, in its counter, denied the manner in which the accident occurred. The age, employment and income of the deceased Mohan are also denied. Further pointing out that the owner of the two wheeler, which the deceased Mohan drove and met with the motor accident and the Insurance Company to which the two wheeler is insured are necessary parties and contended that non-impleading the necessary parties is fatal to the claim petitioners.

5. The Tribunal, after considering the above pleadings of the respective parties and exhibits marked, has awarded a total compensation of Rs.29,50,000/- with costs as against the claim of Rs.90,00,000/-.

6. Aggrieved by the said award, the present Appeal is preferred by the claimants for enhancement of compensation on the ground that the deceased Mohan being an Electrical and Electronic Engineering Diploma Holder. He was employed in the United Gulf Construction Company (UGCC) at Kuwait as Machine Operator and was earning a monthly salary of Rs.75,000/-. At the time of accident, he was sent to India to work at Andhra Pradesh on deputation. He was earning in Kuwait Dinar. The material documents produced by the claimants to prove the income of the

deceased were not considered by the Tribunal. The multiplier method has not been properly adopted by the trial Court while fixing the compensation. The Tribunal failed to consider the evidence of PW-2 to show the employment and income of the deceased Mohan. The monthly income of Rs.15,000/- fixed by the Tribunal is very low and liable to be revised.

7. The point for consideration:

Whether the Tribunal has failed to consider the evidence produced by the claimants regarding the income of the deceased Mohan; If yes what shall be the quantum of compensation the appellants are entitled?.

8. The fatal accident of Mohan is reported to the Police through the First Information Report marked as Ex.P-1 by Manjappa Udaiyar the father of the deceased he is also the third petitioner/appellant. According to the First Information Report, the deceased who was riding the two wheeler was hit by the lorry bearing Registration No. TN.28AJ8051 driven rash and negligently. His son, who was caught under the lorry wheels, got crushed and died on the spot. However, the first informant though he is also incidentally one of the claimant had not entered into the witness box to give evidence. The claimants have examined one Selvarayar, nephew of the deceased Mohan as PW-3. He has deposed before the Tribunal that he saw a lorry from west to east on the Thenkottai street driven rash and negligently without blowing horn. It hit Mohan who was standing with his motor cycle and Mohan died on the spot. Based on his evidence and the Motor Vehicle Inspector reports which is marked as Ex.P-2 and Ex. P-7 for the lorry and two wheeler respectively, we find that the two wheeler Hero Honda Splender has suffered extensive damage on its rear, which indicates the two wheeler was hit on its rear by the lorry. The rider of the two wheeler got under its wheels and got crushed. Therefore, the rash and negligently driving of the lorry driver is proved by the claimants. The Tribunal after taking note of the fact the deceased had valid license to drive motor vehicle, which is proved through Ex P-10 had rightly held that the accident has occurred only due to the rash and negligence of the first respondent, who is the owner-cum- driver of the offending lorry.

9. Regarding the income of the deceased, it is pertinent to note that, the specific case of the claimants is that, the deceased Mohan was employed in Kuwait in a construction company.

The said company used to take work contract in India. To oversee the contract work they used to depute Mohan. While he was working in Kuwait he used to be paid 375 Kuwait Dinar per month. If he is sent to India on deputation, an additional allowance of 100 Dinars will be paid. To support this averment, the claimants have examined one Chitra (PW-1) wife of the deceased Mohan and one Balasubramanian(PW-2), a co-worker in Kuwait. Further, the passport of Mohan (Ex.P-15), the appointment order (Ex.P-16), the banks statement (Ex.P-17) of deceased Mohan are marked to show that the deceased Mohan was employed in a Kuwait company and was drawing salary in dinar.

10. Though the claimants have adduced evidence to prove that the deceased Mohan was employed in Kuwait and drawing salary from that company, the Tribunal has held that there is no evidence to show that he was on employment during the time of accident. Therefore, the Tribunal had tentatively fixed the salary of the deceased person as Rs.15,000/- per month as against the claim of Rs.90,000/-, per month. After 50% towards future prospect and taking the age of the deceased as 34 years, following Sarala Varma's case had applied multiplier of 16, the Tribunal has arrived the loss of income. After deducting 1/3rd towards personal expenses, it had fixed the total loss of income as (Rs.15,000x12x16) = Rs.28,80,000/-

11. On perusal of the exhibits relied by the claimants, this Court find that the conclusion of the Tribunal is not correct and justifiable. The passport entries found in Ex.P-15 proves that, the deceased person was employed in Kuwait since 2006. He has been given residential permit by the Kuwait Government on 12.02.2006 and renewed time to time. The last renewal of his residential permit was on 23.10.2010 and the date of expiry is shown as 18.12.2011 (page 14 of the passport (Ex.P.15)). The passport entries also disclosed the fact that, the deceased had been frequently travelling down to Hyderabad to Kuwait. His last visit to Hyderabad from Kuwait was on 24.06.2011. Unfortunately, he had met with the fatal accident on 13.10.2011. Therefore, the finding of the Tribunal that, the claimants failed to prove that the deceased was on employment on the date of his death, is incorrect. The erroneous conclusion is due to misconstruing [Ex.P-16] as salary certificate by the Tribunal.

12. In fact, Ex.P-16 is the agreement to work and not salary certificate as construed by the trial Court. Reading of Ex.P-16 goes to show that, Mr.Mohan Maniayappan (deceased) had been appointed as operator by M/s United Gulf Construction Company, (UGCC) at Kuwait on 5th August, 2009 and deputed him for its project at India. One of the terms of the agreement as found

in Ex.P-16 is that he will be paid a salary of 375 Kuwait Dinars and additional allowance of 100 Kuwait Dinars will be paid in local currency as overseas allowance. The Company United Gulf Construction (UGCC) had given guarantee of service continuity for the duration of his stay in India for the company work and keep his Kuwait Residence permit active without cancelling it by providing ticket to join duty in India as well as before the completion of every 6 months to enter Kuwait for a day or two and back.

13. In the light of the above terms of agreement, when the entries found in the bank pass book, which has been marked as Ex.P.17 is scrutinized, we could see periodical Foreign deposit in the account of the deceased since 2007. An average of more than Rs.40,000/- per month had been credited into the Canara Bank, Viruthachalam Branch Account of deceased. The credit entries are on regular interval. The last such credit entry is on 10.10.2011 were a sum of Rs.54,321.50/- had been transferred from Bahrain. This indicates the deceased person was in employment and paid salary by the foreign company at Kuwait till the month of his death. Non-production of salary certificate in this case is not so significant because of the foreign credits made in the bank account of the deceased maintained in India couple with the agreement of work indicates that it is the salary income of the deceased person.

14. Though the claimants could not substantiate through documents that the deceased was really drawing salary of 375 kuwait dinars, the bank entries reveals substantial amount through foreign transfer had been credited in lump sum at regular interval towards salary. The credits into his bank account through foreign fund transfers for one year period prior to his death are as under:

24.11.2010	Rs.1,08,527.50
10.01.2011	Rs.80,056.50
15.03.2011	Rs.1,18,597.00
19.05.2011	Rs.72,044.00
11.07.2011	Rs.1,20,830.50
10.10.2011	Rs.57,371.50
Total	Rs.55,74,427.00

15. He being employed on contract basis, one cannot presume with certainty about his future prospects. So, the income of the deceased is fixed at Rs.56 lakhs per annum. The date of birth of the deceased Mohan is 09.12.1978 as per the entry found in his

passport. Therefore, on the date of death, he was running 34 years, which falls under the bracket of multiplier 16. He being married to first claimant and parents alive and dependant on him, 1/3rd of his income has to be deducted towards his personal expenses. Thus, the loss of income is (Rs.54,00,000/-x16)x1/3. This comes a little short of Rs.60,00,000/-

16. Therefore, this Court enhances the compensation from Rs.29,50,000/- to Rs.60,00,000/-, with interest at the rate of 7.5%. From out of the award amount, the wife of the deceased/first claimant/appellant shall be paid Rs.40 lakhs with interest. His parents, who are the second and third claimants/appellants shall be paid Rs.10 lakhs each with interest. Any amount already paid shall be given credit to the amount payable and interest thereof.

17. Accordingly, the Civil Miscellaneous Appeal is partly allowed with costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

bsm
To
The learned Principal Subordinate Judge,
Vridhachalam,
Cuddalore District.

2.The Section Officer
VR Section
High Court, Madras

+1 cc to Mr.S.Udayakumar Advocate sr 9825
+1 cc to Mr.R.K.Sethuraman Advocate sr 10192

CMA No. 429 of 2016

nmi(co)
aa28/03/2018