Niti

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.148 OF 2017

1. Mr. Silvestre Rodrigues,
S/o. Costao Rodrigues,
57 years, agriculturist.

2. Mrs. Lina Fernandes,
major in age, w/o. Silvestra Rodrigues,
Both r/o. H.No.585/2, Tanki,
Davodxet-Goa, 403705. … Appellants

Versus

1. Mr. Arjun Kore,
Major in age, r/o. H.No.513,
Near Health Centre, Chinamola,
Calem, Goa.

2. The Oriental Insurance Co. Ltd.,
Gafur Building 2nd floor station road,
Curchorem, Goa. …. Respondents

Mr. C.A. Coutinho, Advocate *for the Appellant.*
Ms. C. Afonso, Advocate *for Respondent No.2.*

CORAM: M. S. SONAK, J.

DATE : 11th AUGUST 2022

ORAL JUDGMENT :

1. Heard Mr. C.A. Coutinho, who appears along with Mr. Ivo Santimano and Ms. C. Afonso for respondent no.2 – Insurance Company.

2. The appellants are the parents of deceased Stanley Rodrigues, who died in a vehicular accident on 21.09.2014 at Quepem-Goa. Stanley was 28 years old at the time of his death in the accident.

3. The appellants challenge the judgment and award dated 18.08.2016 made by the Motor Accidents Claims Tribunal, South Goa, in Claim Petition No.59/2015 to the extent it awards compensation of only ₹12,36,000/- together with interest at the rate of 9% per annum from the date of the petition till payment. In the appeal memo, the appellants submit that compensation of at least ₹25,00,000/- was due and payable to them.

4. Mr. Coutinho submits that there was no serious challenge to the salary certificate produced on record subject to proof. He proposes that the only challenge was to the statement that deceased Stanley was also provided food and accommodation in addition to his salary of ₹18,000/- per month as a house driver. Accordingly, he submitted that the Tribunal erred in rejecting this proof of income and based its award on the rates of minimum wages in India.

5. Mr. Godinho handed in a chart of computations. He submitted that in terms of the law in ***National Insurance***

Company Limited V/s. Pranay Sethi & Ors.[1] and ***Magma General Insurance Co. Ltd V/s. Nanu Ram Alias Chuhru Ram***[2], the just compensation, in this case, would come to ₹29,16,500/-. He submitted that it is well settled that the claimants before such Tribunals should not be tied down to the amount they claimed in their petition. He offered that the Tribunal and this Court must determine the just compensation and order its payment.

6. Ms. C. Afonso submitted that the so-called salary certificate was never proved in accord with the law. She pointed out that the salary certificate was not even issued by Stanley's employer but by the Man Power Recruitment Company. Furthermore, she pointed out that it was admitted that Stanley was never recruited through the manpower recruitment agency in the evidence.

7. Ms. Afonso also pointed out that the appellants only urged consideration of minimum rate wages in Kuwait in the appeal memo. She submits that even this is not permissible. She relies on ***United India Insurance Company Limited V/s. Satinder Kaur @ Satwinder Kaur & Ors.***[3].

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1 (2017) 16 SCC 680

2 2018 18 SCC 130

3 2021 (11) SCC 780

8. Ms. Afonso submits that even otherwise, the Tribunal has erred in the compensation amount computation. If correct principles were to be applied, the compensation amount would come to ₹11,46,728/-. She also submitted that foreign income should not be mechanically considered, and the Tribunal was justified in adverting to the Indian circumstances. She relied on ***United India Insurance Co. Ltd. & Ors. V/s. Patricia Jean Mahajan & Ors.***[4] in support of this proposition.

9. Ms. Afonso, for all the above reasons, submitted that this appeal may be dismissed.

10. The rival contentions now fall for my determination.

11. The only dispute in this appeal concerns the computation of the quantum of compensation. There is no dispute that Stanley was 28 years old at the time of his death; therefore, the applicable multiplier would be 17. There is also no dispute about Stanley being a bachelor at the time of his death; therefore, 50% of his income had to be deducted towards his personal expenses.

12. There is some dispute about adding 50% towards the determined annual income because Ms. Afonso submitted

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4 2002 6 SCC 281

without prejudice that Stanley was a contractual employee and there was no certainty about the future contract. She presented that in such circumstances, the addition towards future prospects should not exceed 40% in terms of *Pranay Sethi* (supra). However, Mr. Coutinho submitted that Stanley was a salaried employee, and the Tribunal was justified in making an addition of 50%.

13. The main dispute is about Stanley's income. On this aspect, firstly, evidence of his father (AW1) is relevant.

14. AW1 in paragraph 8 of his affidavit in lieu of examination in chief, has deposed the following:

> *"8. I say that at the time of death my son was 28 yrs of age and was working in abroad and was receiving a salary of KD.85/- that is Rs.18,000/- he had come to Goa in holidays and continuing his leave as his mother is sick, he was supposed to join the duty within a week on a salary of Rs.25,000/- in between he met with an accident and succumbed a injury."*

15. AW1 also produced Stanley's salary certificate, which was accepted in evidence subject to proof. The salary certificate is dated 10.12.2014 and has been issued by Bothaina Nassar Taher Othman Manpower Recruitment. This certificate is on page 56 of the paper book.

16. The certificate states that Stanley was recruited as a House Driver on 15.05.2011, and his basic salary was KD.85/- per month. There is no dispute that KD.85/- per month corresponds to ₹18,000/- per month.

17. Although the salary certificate was not proved by applying the strict principles of the Evidence Act, it is necessary to accept that it is not always easy for the dependents to examine them in the case of foreign employers. Therefore, AW1 was cross-examined on his statement that Stanley was earning ₹18,000/- per month (KD.85/-) in Kuwait plus food and residence. The relevant portion of this cross-examination reads as follows:

> *"My son was earning ₹18,000/- per month (85KD) in Kuwait plus food and residence.*
>
> *It is not true to suggest that my son was not getting food and residence besides the monthly salary of ₹85 K.D. It is true that it is not mentioned in the certificate that my son was also getting food and residence besides his monthly salary.*
>
> *My son was supposed to join the same company where he was previously employed. It is true that it is not mentioned in the certificate at Exhibit 28 that my son would get the salary of 25,000/-. My son had come to Goa as my wife was sick and suffering from heart ailment. She was however, not operated but cured with medicines."*

18. The above line of cross-examination suggests that there was no serious challenge to AW1's statement about Stanley's earnings of ₹25,000/- per month, and the challenge was mainly to his statement that Stanley was getting food and residence beside the monthly salary.

19. The claimants examined Santan Pereira (AW4), who deposed that he took Stanley to Kuwait in 2011. He also deposed Stanley's employment as a House Driver on a monthly salary of KD.85/-. Furthermore, he deposed that after 2 & ½ years, Stanley had come to Goa during the holidays because his mother was sick. Finally, he deposed that Stanley was due to join duties at the end of September in Kuwait on a higher salary of ₹25,000/- per month and that Stanley could not do so because, in the meanwhile, he died in a vehicular accident.

20. Again, in AW4's cross-examination, not much dent was made apart from vague denials. Finally, AW4 stated that Stanley came to Goa after completing a contract of 2 & ½ years and was supposed to join duty in Kuwait. Based on this statement, the Tribunal had concluded that since Stanley had returned after completing the contract, that implied that at the time of the accident, Stanley had no existing contract and consequently no employment.

21. In my judgment, the approach of the Tribunal on the issue of determining Stanley's monthly income was not correct. First, there was no reason to apply the strict principles of the Evidence Act. Secondly, the Tribunal was not justified in overemphasizing a stray statement in AW4's evidence or reading such a statement from out of this entire context. Firstly, the Tribunal failed to appreciate the line of cross-examination. It suggested that there was no serious dispute about Stanley's employment in Kuwait as a House Driver and, to a certain extent, about his monthly income.

22. In Satinder Kaur (supra), on behalf of the claimants, two salary certificates had been produced. There was a disparity between the two certificates. The Hon'ble Supreme Court found that one of the salary certificates indicated the embassy had duly endorsed a lower salary. Based on the evaluation of the documentary evidence, the Court agreed that greater probative value had to be given to the earlier certificate that the embassy endorsed.

23. Satinder Kaur (supra) does not assist the respondent's case in the present matter. As noted earlier, there is evidence of Stanley's employment and earnings. The line of cross-examination also primarily disputes Stanley's additional income as earnings. The witnesses consistently deposed about Stanley's return to Kuwait, which was unfortunately interrupted due to his demise in the vehicular accident.

24. Similarly, the principle in *Patricia Jean Mahajan* (supra) would also not apply to the facts of the present case where the claimants were not even claiming that Stanley was earning something exorbitant. The claim was substantially within the bounds of reasonability though some discounts could be made because of some inherent uncertainties regarding foreign employment. On cumulative consideration of all the above factors, to my mind, Stanley could be said to be earning at least ₹16,000/- per month after making allowances for uncertainties, taxation, etc.

25. This is neither a case of self-employment nor a case where Stanley had no salaried job. Therefore, Tribunal was justified in making an addition of 50%. Similarly, Tribunal was justified in deducting 50% towards Stanley's personal expenses. Thus, Stanley's contribution towards his dependent parents would come to ₹24,48,000/-.

26. To the above amount, ₹15,000/- will have to be added towards the loss of estate and another ₹15,000/- towards funeral expenses. Therefore, each appellant would be entitled to an amount of ₹40,000/- towards the consortium. Thus, the total compensation would come to ₹25,58,000/-.

27. In their Claim Petition, the appellant claimed ₹10,00,000/-. In their appeal memo, they had claimed ₹25,00,000/- However, the just compensation, in my judgment, would be ₹25,58,000/-.

28. The accident, in this case, took place on 21.09.2014. Accordingly, the interest at the rate of 9% per annum is excessive, and the same ought to be 7%.

29. Accordingly, this appeal is partly allowed the compensation amount is enhanced to ₹25,58,000/-, with interest at the rate of 7% per annum from the date of filing of the Claim Petition till actual payment.

30. Ms. Afonso states that the original award has been duly satisfied. If so, the respondent, including, in particular, respondent no.2 – Insurance Company, must deposit the enhanced component with interest in this Court within six weeks after giving due intimation to the learned Counsel for the appellants. Needless to add that the Insurance Company will be entitled to make adjustments considering the amount already paid.

31. Once the amount is deposited, the appellant will be entitled to withdraw the same by furnishing documents and bank details so that the Registry can directly transfer the amount into their bank accounts.

32. The appeal is disposed of in the above terms. Accordingly, there shall be no order for costs.

M. S. SONAK, J.

NITI K HALDANKAR Digitally signed by NITI K HALDANKAR Date: 2022.08.18 14:10:22 +05'30'