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A.No.4575 of 2024

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in
C.S.(Comm.Div.) No. 87 of 2024

Dr.G.JAYACHANDRAN, J.

Suit filed by the wife of the deceased Baskar Pitchai, who worked in the 2nd defendant vessel as Able Bodied Seaman (ABS) , later died after sustaining injury while working on the Board.

2. The accident took place on 15.09.2020, when Baskar Pitchai was carrying on Cargo work in the vessel. 10 days later, he reported about the accident and left leg injury to the Master of the Vessel. He was signed off from the ship at Denmark. At that time, the 2nd defendant's vessel was sailing under the flag of Portugal near Denmark. In a hospital at Denmark, he was given treatment. Later, he came to Mumbai and got admitted in a private hospital. After treatment for about 10 days as in-patient, he was discharged from the hospital and he came to Tuticorin and was under treatment. He died on 09.06.2022.



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3. The case of the plaintiff is that her husband died due to injury sustained while discharging the duty as Able Bodied Seaman in the 2nd defendant's vessel. He was not provided with proper medical care by the defendants, which has led to the death for her husband. Admitting that her husband was paid USD 25,000 as compensation, which was obtained under mis-representation as adequate and towards full quit settlement she claims aggregate damage of Rs.1 crore with interest.

4. The 1st defendant Vessel is the sister Vessel of the 2nd Defendant Vessel. While the 1st defendant vessel was in the Port of Chennai, it was arrested and later, released on deposit of Rs.1 crore in the Court.

5. The defendants have filed written statement and pending trial, the application is filed to pass summary judgment with counter claim.

6. The suit is sought to be dismissed on the ground of limitation, non- disclosure of cause of action, mis-joinder of parties, mis-declaration and want of jurisdiction. Further, the defendants claim that the suit is hit



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by the principle of *res subjudice*, since the plaintiff has instituted Writ Petition No.19198 of 2023 for identical relief.

7. The learned counsel appearing for the plaintiff/respondent would submit that in the accident, both the legs of Baskar Pitchai, got injured and he was not given proper treatment neither at Norway nor at Mumbai. He was left uncared by the respondents inspite of reporting the injury to the Master of the vessel. The respondents failed to care the injured Able Bodied Seaman as per law but discharged him without paying adequate compensation. Only after issuance of notice they paid 25,000 USD. Bhaskar Pitchai sustained 100% disability. This injury is the cause for his death later. Hence, compensation must be proportionate to the injury and its effect.

8. The prime contention of the applicants/defendants is that the death of Baskar Pitchai is not due to the direct connection with the operation of the vessel. For the injury sustained, he had been adequately paid and he has given an acquittance for the receipt of the money against all claims. The death occurred after two years of the accident is



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unconnected with the accident. Therefore, it does not fall within the meaning of the 'Maritime Claims' as defined under Section 4 of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017.

9. According to the defendants , the medical report relied by the plaintiff clearly shows that the injury sustained by Baskar Pitchai on 15.09.2020 is not the cause for his death on 09.06.2022. Infact, Baskar Pitchai reported about the injury to his Master only after 10 days of the said occurrence. Immediately he was discharged and taken to the hospital at Denmark on 04.10.2020. Thereafter he was brought to India and admitted in the hospital at Mumbai. He was treated as inpatient from 10.10.2020 to 20.11.2020 and thereafter, got discharged. He got admitted in the hospital at Tuticorin on 01.12.20220 and issued a notice to the defendants demanding compensation. Under the Collective Bargaining Agreement he was paid USD 25000. After receiving the money he gave receipt of release, quit-claim and indemnity. Hence, the suit is not maintainable and liable to be dismissed summarily. That apart as counter claim for illegal arrest of the first defendant's Vessel, the plaintiff is liable to pay compensation.



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10. Contrarily, the learned counsel appearing for the plaintiff/respondent submitted that the death was direct consequence of the injury. The deceased Baskar Pitchai was affected by diabetes Mellitus Type-II and injury on his left leg, resulted in 100 % disability and later, caused his death. Though the death caused nearly about 2 years after the accident, the proximity between the accident and the damage was not severed. Infact, due to total neglect on the part of the defendants and failure to provide proper and adequate medical care soon after the injury, the health condition of Bhaskar Pitchai got deteriorated leading to his death.

11. Regarding the payment of 25000 USD as compensation and the release, quit claim and indemnity bond given by Baskar Pitchai, the learned counsel appearing for the plaintiff/respondent submitted that such receipt of compensation will not prejudice the right of the legal heirs of Seaman to seek adequate compensation.

12. In support of his argument, the learned counsel relied upon the



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judgment of the Hon'ble Supreme Court in *Sabeeha Faikage and others v. Union of India and others* reported in [(2013)1 SCC 282].

13. After giving anxious consideration to the rival submissions and on perusal of the documents, this Court is of the opinion that the suit is filed based on the Act of Tort. The Maritime Law enables claimant to file the suit for damages as any Maritime claim in respect of a damage or loss of life or personal injury arising out of any collusion between the vessels, and carrying out of or omission to carry out a manoeuvre in the case of one or more vessels, in pursuance of Section 285 of the Merchant Shipping Act, 1958.

14. It is the case where the plaintiff claims that her husband sustained injury while carrying cargo work. So, it is not the case of injury due to a collusion between the vessels or an injury while carrying out any manoeuvres of vessels. Admittedly, the accident has taken place outside the territory of India and at the time of accident, the vessel was carrying flag of Portugal. The Maritime Claim under Section 4(e) of the Act can be laid for loss of life or personal injury occurring whether on land or on



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water, in direct connection with the operation of a vessel.

15. It is the clause (o) of Section 4 enables the Master or a Member of the crew of a vessel or their heirs and dependants for wages or any sum due out of wages or adjudged to be due which may be recoverable as wages or cost of repatriation or social insurance contribution payable on their behalf or any amount an employer is under an obligation to pay to a personal as an employee.

16. The instant suit is filed against the defendants' vessel on the premises that the 1st defendant vessel is the sister vessel of the 2nd defendant and it has come to the shore within the territory of the Madras High Court jurisdiction. The plaintiff is entitled to proceed against the defendants' vessel in *rem* and in *personam* against the owners for the Tort committed by them and has laid the claim under Section 4(1)(e), 5(2) and 9(b) of the Admiralty Jurisdiction and Maritime Claims.

17. To pass a Summary judgment, under Order XIII A of the C.P.C., and dismiss the suit, it must satisfy the grounds stated in Rule (3)



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of Order XIII (A) CPC, which reads as below:-

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“3. Grounds for summary judgment:- The Court may give a summary judgment against a plaintiff or defendant on a claim if it considers that-

(a)the plaintiff has no real prospect of succeeding on the claim or the defendant has no real prospect of successfully defending the claim, as the case may be; and

(b)there is no other compelling reason why the claim should not be disposed of before recording of oral evidence.”

18. From the pleadings, the application for summary judgment is predicated on the facts that there is no proximity between the 1st and 2nd defendants. The death is unforeseeable to the injury sustained by Bhaskar Picthai, the long time gap of more than 2 years between the incident and the death attracts maxim "*Novus Actus interveniens*". Thus, there is no ground to make a Maritime Claim.

19. The *prima facie* material placed would show that the deceased Baskar Pitchai was employed in the 2nd defendant's Vessel. The statement in the plaint is to the effect that the 1st defendant and the 2nd defendant are owned by sister companies. This assertion is disputed by the defendants.



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The fact that Bhasker Picthai sustained injury on board and for the said injury he had been compensated is admitted, but the adequacy of compensation and the validity of his letter of indemnity is the primary issue need to be tested. Bhaskar Pitchai died nearly 20 months after the alleged accident. This fact is undisputed, however, the proximity between the cause and effect is disputed by the defendants.

20. The controverted facts, are the triable issues in this case. Whether the claim of additional compensation by the plaintiff is sustainable or not, is based on the proof of the facts controverted. Therefore, without recording evidence, decision on controverted facts cannot be arrived.

21. Hence, the application for summary judgment is dismissed without prejudice to the parties to prove their case by leading oral and documentary evidence.

22. In the result, Application No.4575 of 2024 stands dismissed.

No costs.



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