

Karimulla Vs. K.Udayakumar

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Court : Chennai

Decided On : Mar-06-2014

Judge : S.Manikumar

Appellant : Karimulla

Respondent : K.Udayakumar

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED:

06. 03.2014 CORAM THE HON'BLE MR.JUSTICE S.MANIKUMAR C.M.A.No.316 of 2014 Karimulla ... Appellant vs. 1.K.Udayakumar 2.ICICI Lombard General Insurance Co. Ltd., No.84/85, Walltax Road, Chennai 600 003. ... Respondents Appeal filed under Section 173 of the Motor Vehicles Act 1988 against the judgment and decree dated 05.09.2013 made in M.A.C.T.O.P.No.2677 of 2010, on the file of Motor Accidents Claims Tribunal (Chief Judge, Small Causes Court) Chennai. For appellant : Mrs.R.Reena

JUDGMENT

Being aggrieved by the inadequacy of the quantum of compensation, the claimant has preferred this appeal.

2. In the accident, which occurred on 13.05.2010, mother of the appellant, died. In this regard, a case in Cr.No.121/H1/2010, has been registered on the file of Washermenpet Police Station, Kancheepuram District, against the driver of the

van, bearing Registration No.TN03D1325 for the offences under Section 337 IPC and Section 184 of the Motor Vehicles Act. Son of the deceased mother, claimed compensation of Rs.8,00,000/-. In the claim petition, age of the deceased was shown as 55 years and that she was stated to be a housemaid, earning Rs.6,500/- per month.

3. The appellant/claimant examined himself as PW.1. Ex.P1 FIR, dated 13.05.2010, Ex.P2 Post-Mortem Certificate, dated 18.05.2010, Ex.P3 Legal Heir Certificate, dated 31.08.2012 and Ex.P4 Charge Sheet, dated 09.06.2010, have been marked on the side of the appellant/claimant. No witness has been examined on the side of the respondent-Insurance Company. However, a Rough Sketch and Accident Register, have been marked as Exs.R1 and R2.

4. On evaluation of pleadings and evidence, the Claims Tribunal found that the driver of the van, insured with the appellant-Insurance Company, was negligent in causing the accident. On the aspect of quantum of compensation, upon perusal of Ex.P1 FIR and Ex.R2 Accident Register, the Claims Tribunal, fixed age of the deceased as 80 years. The Tribunal, by observing that at the age of 80 years, it was not possible to earn Rs.6,000/- per month, fixed the income of the deceased at Rs.15,000/- per annum and thereafter, by applying the decision in Sarala Verma v. Delhi Transport Corporation reported in 2009 (2) TNMAC1 awarded Rs.50,000/- (Rs.15,000/- x 2/3 x 5), as loss of contribution to the family.

5. That apart, a sum of Rs.10,000/- has been awarded for loss of love and affection. Rs.10,000/- for Funeral Expenses and Rs.5,000/- for transportation, have been awarded. Considering the fact that the deceased was hospitalised between 13.05.2010 and 19.05.2010 and taking note of the decision in Goutham Batna v. J.Pramod Kumar Bansal reported in 2011 ACJ1360 the Claims Tribunal has awarded a sum of Rs.25,000/- for pain and suffering and mental agony. Altogether, the Claims Tribunal has awarded Rs.1,00,000/-, with interest at the rate of 7.5% per annum.

6. The aspect as to whether, legal representatives of the deceased are entitled to any compensation, under the head, ".pain and suffering". and mental agony, underwent by the deceased, during the period of treatment, before the death, has

been considered in Oriental Insurance Company v. Mohinder Kaur [FAO No.656 of 2009, dated 04.05.2013]., wherein, it has been held as follows: ".It has provided Rs.1 lakh for pain and suffering. If the compensation were to be assessed for death as having resulted from the accident, the original assessment made for pain and suffering during the time when the claimant was alive, cannot any longer survive in terms of Section 306 of the Indian Succession Act. When the award was set aside with a claim for injury previously, then it must only be taken that amount was not a component of damage to the estate and it was only a personal injury. Consequently, the provision for Rs.1 lakh made by the Tribunal was erroneous and would require to be set aside."

7. Seeking enhancement of the quantum of compensation, learned counsel for the appellant/claimant submitted that the Claims Tribunal ought to have fixed the monthly income of the deceased at Rs.6,500/-. It is also his contention that the Claims Tribunal ought to have fixed the age of the deceased at 60 years, based on Ex.P2 Post-Mortem Certificate, dated 18.05.2010 and accordingly, computed the loss of contribution to the family. Except the above, no other submissions have been advanced. Heard the learned counsel for the parties and perused the materials available on record.

8. The accident has occurred on 13.05.2010. During the course of hearing, it was submitted that Ex.P1 FIR has been lodged on 13.05.2010, declaring the age of the deceased as 80 years. Even in Ex.R2 Accident Register, the age of the deceased has been mentioned only as 80 years. Both the documents have been written on the same date. Seventeen days from the date of registering Ex.P1 FIR, the appellant/claimant has filed the claim petition on 31.05.2012, under Section 166 of the Motor Vehicles Act r/w. Rule 3 of the Motor Accident Claims Tribunal Rules, seeking compensation of Rs.8,00,000/-, for the death of his mother, in the road accident, which occurred on 13.05.2012, strangely, declaring that the age of the deceased mother, as 55 years.

9. Before the police, a specific statement has been made that the age of the deceased was 80 years. Accordingly, entries have been made. Charge Sheet has also been filed on 09.06.2010, against the driver of the Van, insured with the

respondent-Insurance Company. Quite contrary to the declaration made in Ex.P1 FIR and Ex.R2 Accident Register, the appellant, in order to enrich himself, has unjustly reduced the age of the deceased as 55 years, and filed a claim under Section 166 of the Motor Vehicles Act.

10. In the claim petition, the age of the appellant has been mentioned as 39 years. The age of the deceased has been shown as 55 years. If the contentions of the appellant are to be accepted, then the deceased should have been married, at the age of 15 years and when she was aged 16 years, the appellant should have been born. Absolutely, no material has been produced before the Claims Tribunal to prove that the deceased was married, at the age of 15 years.

11. At no point of time, the appellant has objected to the entries made in Ex.P1 FIR and Ex.R2 Accident Register, wherein, the age of the deceased has been clearly mentioned as 80 years. However, it appears that in Ex.P2 Post-mortem Certificate, dated 18.05.2010, the age of the deceased has been mentioned as 55 years. Taking advantage of the entry in Ex.P2 Post-mortem Certificate, the appellant has chosen to make a declaration in the claim petition that the age of the deceased as 55 years, at the time of accident.

12. It is not uncommon in some claim petitions, a lesser age of the deceased is mentioned, so that, while adjudicating the claim, the multiplier to be adopted would be more, for the purpose of computation of loss of dependency and thereby, claimant has got a chance of getting more compensation. Conversely, if higher age is mentioned in the claim, by application of a lesser multiplier, the quantum of compensation towards loss of contribution would be less. In many cases, the claimants do not produce any document of proof of age and invariably, the Claims Tribunal has to consider the age mentioned in the documents produced before the Court.

13. The age mentioned in the documents, such as, FIR, Accident Register, Post-Mortem Certificate, depends upon the information furnished by the informant. At times, depending upon the physical appearance of the injured or deceased, as the case may, approximate age, would be mentioned in the abovesaid documents. Such entry is not the proof of age.

14. In the absence of any certificate, like birth extract or authentic document to speak about the age of the injured or deceased, as the case may be, or even the School records, in order to compute the loss of income, in case of the injured or loss of contribution to the family, in case of the deceased, as the case may be, Claims Tribunals give credence to the entries in FIR and Post-Mortem Certificate. Claim petitions are being filed, immediately after the accident, without medical records. But during trial, as regards the nature of injuries, the tribunals have an opportunity to scrutinise the medical records, such as, wound certificate, discharge summary, medical record book, etc. But in the case of age, no proof is enclosed and there is always a possibility of manipulation, with an intention to gain more compensation. A birth extract registered under the Birth and Death Registration Act, would be a primary evidence, for proof of age. If birth extract is not available, the claimants may be directed to produce some secondary evidence, acceptable in law, for proof of age, at the time of submitting the application.

15. At this juncture, this Court deems it fit to suggest to the Government of Tamil Nadu, to make a provision in the Motor Vehicles Act and the Rules framed thereunder, making it compulsory to submit certificate of age proof, at the time of making a claim, under Section 163-A or 166 of the Motor Vehicles Act, 1988, so as to enable the Claims Tribunal to compute the quantum of compensation, precisely.

16. Reverting back to the case on hand, it could be seen that the appellant, at the time of lodging Ex.P1 FIR, has given the age of his mother as 80 years. But for the purpose of claiming compensation, he has mentioned the age of the deceased as 55 years and filed a declaration to that effect. In the light of the above discussion, this Court is of the view that the claim made by the appellant, with a declaration about the age of the deceased, amounts to approaching the Court with unclean hands. Reference can be made to a decision of the Supreme Court in *Arunima Baruah v. Union of India* reported in 2007 (6) SCC120 wherein, at Paragraphs 11 to 14, it has held as follows: ".11. The Court's jurisdiction to determine the lis between the parties, therefore, may be viewed from the human rights concept of access to justice. The same, however, would not mean that the Court will have no jurisdiction to deny equitable relief when the complainant does not approach the Court with a pair of clean hands; but to what extent such relief should be denied is

the question.

12. It is trite law that so as to enable the court to refuse to exercise its discretionary jurisdiction suppression must be of material fact. What would be a material fact, suppression whereof would disentitle the appellant to obtain a discretionary relief, would depend upon the facts and circumstances of each case. Material fact would mean material for the purpose of determination of the lis, the logical corollary whereof would be that whether the same was material for grant or denial of the relief. If the fact suppressed is not material for determination of the lis between the parties, the court may not refuse to exercise its discretionary jurisdiction. It is also trite that a person invoking the discretionary jurisdiction of the court cannot be allowed to approach it with a pair of dirty hands. But even if the said dirt is removed and the hands become clean, whether the relief would still be denied is the question.

13. In *Moody v. Cox* [(1917) 2 Ch. 71: (1916-17) All ER Rep 548 (CA)]., it was held: (All ER pp. 555 I-556 D) It is contended that the fact that Moody has given those bribes prevents him from getting any relief in a court of equity. The first consequence of his having offered the bribes is that the vendors could have rescinded the contract. But they were not bound to do so. They had the right to say no, we are well satisfied with the contract; it is a very good one for us; we affirm it. The proposition put forward by counsel for the defendants is: It does not matter that the contract has been affirmed; you still can claim no relief of any equitable character in regard to that contract because you gave a bribe in respect of it. If there is a mistake in the contract, you cannot rectify it, if you desire to rescind the contract, you cannot rescind it, for that is equitable relief. With some doubt they said: We do not think you can get an injunction to have the contract performed, though the other side have affirmed it, because an injunction may be an equitable remedy. When one asks on what principle this is supposed to be based, one receives in answer the maxim that anyone coming to equity must come with clean hands. I think the expression clean hands is used more often in the textbooks than it is in the judgments, though it is occasionally used in the judgments, but I was very much surprised to hear that when a contract, obtained by the giving of a bribe, had been affirmed by the person who had a primary right

to affirm it, not being an illegal contract, the courts of equity could be so scrupulous that they would refuse any relief not connected at all with the bribe. I was glad to find that it was not the case, because I think it is quite clear that the passage in *Dering v. Earl of Winchelsea* [(1787) 1 Cox Eq Cas 318]:

2. *Bos & P270*, which has been referred to, shows that equity will not apply the principle about clean hands unless the depravity, the dirt in question on the hand, has an immediate and necessary relation to the equity sued for. In this case the bribe has no immediate relation to rectification, if rectification were asked, or to rescission in connection with a matter not in any way connected with the bribe. Therefore that point, which was argued with great strenuousness by counsel for the defendant, Hatt, appears to me to fail, and we have to consider the merits of the case.

14. In *Halsburys Laws of England*, 4th Edn., Vol. 16, pp. 874-76, the law is stated in the following terms: 1303. He who seeks equity must do equity. In granting relief peculiar to its own jurisdiction a court of equity acts upon the rule that he who seeks equity must do equity. By this it is not meant that the court can impose arbitrary conditions upon a plaintiff simply because he stands in that position on the record. The rule means that a man who comes to seek the aid of a court of equity to enforce a claim must be prepared to submit in such proceedings to any directions which the known principles of a court of equity may make it proper to give; he must do justice as to the matters in respect of which the assistance of equity is asked. In a court of law it is otherwise: when the plaintiff is found to be entitled to judgment, the law must take its course; no terms can be imposed. * * *

1305. He who comes into equity must come with clean hands. A court of equity refuses relief to a plaintiff whose conduct in regard to the subject-matter of the litigation has been improper. This was formerly expressed by the maxim he who has committed iniquity shall not have equity, and relief was refused where a transaction was based on the plaintiff's fraud or misrepresentation, or where the plaintiff sought to enforce a security improperly obtained, or where he claimed a remedy for a breach of trust which he had himself procured and whereby he had obtained money. Later it was said that the plaintiff in equity must come with perfect propriety of conduct, or with clean hands. In application of the principle a person

will not be allowed to assert his title to property which he has dealt with so as to defeat his creditors or evade tax, for he may not maintain an action by setting up his own fraudulent design. The maxim does not, however, mean that equity strikes at depravity in a general way; the cleanliness required is to be judged in relation to the relief sought, and the conduct complained of must have an immediate and necessary relation to the equity sued for; it must be depravity in a legal as well as in a moral sense. Thus, fraud on the part of a minor deprives him of his right to equitable relief notwithstanding his disability. Where the transaction is itself unlawful it is not necessary to have recourse to this principle. In equity, just as at law, no suit lies in general in respect of an illegal transaction, but this is on the ground of its illegality, not by reason of the plaintiffs demerits. 17. Motor Accident Claim Cases are summary in nature. The Act is a beneficial legislation. Equity is the predominant factor in deciding the claim petitions. Motor Vehicles Act is not meant to be misused for unjust enrichment. On the facts and circumstances of the case, this Court is of the view that the appellant has made an attempt to gain more compensation, by making an incorrect declaration. Conduct of the appellant deserves to be condemned.

18. Therefore, while dismissing the appeal, on merits, this Court deems it fit to impose a cost of Rs.5,000/-, to be paid to ICICI Lombard General Insurance Co. Ltd., No.84/85, Walltax Road, Chennai 600 003, 2nd respondent herein, who shall take steps to recover the same, in accordance with law. No costs. 06.03.2014
Index: Yes Internet: Yes skm S. MANIKUMAR, J.

skm To 1. The Motor Accidents Claims Tribunal (Chief Judge, Small Causes Court) Chennai.

2. The ICICI Lombard General Insurance Co. Ltd., No.84/85, Walltax Road, Chennai 600 003. C.M.A.No.316 of 2014 06.03.2014

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