Triveni Kodkany vs Air India Ltd. on 3 March, 2020

Bench: D.Y. Chandrachud, Ajay Rastogi

CA 2914/2019

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No 2914 of 2019

Triveni Kodkany and Others …Appe

Versus

Air India Limited and Others …Resp

and with

Civil Appeal No 5862 of 2019

JUDGMENT

Dr Dhananjaya Y Chandrachud, J 1 On 22 May 2010, flight IX 812 of Air India Express from Dubai to Mangalore crashed at Mangalore airport. One of the passengers aboard the ill-fated aircraft, who died in the accident, was Mahendra Kodkany. Mahendra was an expat employed as a Regional Director for the Middle Eastern Region with GTL Overseas (Middle East) FZ- LLC. His spouse, Triveni Kodkany submitted a claim on 10 March 2011 for compensation from Air India. Air India paid an amount of Rs 4,00,70,000 to her on 20 March 2012 against an indemnity. Apart from this, an amount of Rs 40 lakhs was in addition paid to the parents of the deceased. On 18 April 2012, the parents and the brother of the deceased instituted a suit against Air India to claim compensation. The Trial Court by its judgment dated 27 September 2018 decreed the claim of the mother of the deceased in the amount of Rs 70 lakhs. The claims of the father and the brother were dismissed.

2 The complaint out of which the present appeals arise was instituted on 18 May 2012 by the surviving spouse, son and daughter of the deceased before the NCDRC, claiming compensation of INR 13.42 crores, together with interest at the rate of 18 per cent per annum from the date of the accident and other consequential payments. Air India contested the proceedings before the NCDRC. The NCDRC allowed the complaint and awarded compensation of AED 58,81,135 equivalent to Rs 7,35,14,187 on the basis of a conversion rate of Rs 12.50 per AED. The NCDRC noted that an amount of Rs 40 lakhs has been paid to the parents of the deceased apart from a sum of Rs 4 crores which was paid to the complainants. Both those sums were directed to be deducted from the rupee equivalent of AED 58,81,135. The balance of the principal sum due was determined at Rs 2,95,14,187. Simple interest at the rate of 9 per cent per annum was awarded from 22 May 2010 till the date on which an amount of Rs 40 lakhs was paid to the parents of the deceased. The complainants were held to be entitled to interest on the amount of Rs 6,95,14,187 with effect from the date on which the payment was made to the parents of the deceased till the date on which Rs 4 crores was paid to the complainants. They were also held entitled to interest on the remaining amount with effect from the date on which Rs 4 crores were paid to the complainants until the date on which the entire principal sum is actually paid. 3 Cross appeals have been filed in these proceedings. Chronologically, the first appeal was filed by the complainants. Air India has also filed an appeal challenging the order of the NCDRC. For convenience of reference, we will refer to the parties as the complainants and Air India.

4 The deceased was, at the time of the accident, working with GTL Overseas (Middle East) FZ LLC as its Regional Director in the Middle Eastern Region, a position which he held since May 2009. The breakup of his Annual Cost to Company (CTC) is indicated in the following table:

> Basic HRA Transport Telephone Gross LTA Medical Gratuity Total (AED) (AED) Allowance Allowance Salary (AED) (AED) (AED) CTC per (AED) (AED) per year year (AED) (AED) 266,398 102,569 40,957 30,000 439,924 12,000 15,144 15,327 482,395

5 By its judgment dated 10 December 2018, the NCDRC determined the total income as AED 4,52,395 by deducting the telephone allowance of AED 30,000. A deduction of twenty per cent was taken towards personal expenses of the deceased on the basis that he was survived by four dependents; the mother, spouse and two minor children. An addition of twenty-five per cent was made on account of future prospects. The NCDRC applied a multiplier of thirteen (the deceased being forty five years old at the date of the accident). On this basis, the total compensation which was payable to the complainants was computed at AED 58,81,135. This was converted to INR on the basis of a conversion rate of Rs 12.50 per AED, which was the rate adopted in the complaint which was lodged before the NCDRC. The computation has been arrived at on the above basis. Interest, as noted earlier, has been directed to be paid. 6 Four submissions have been urged on behalf of the complainants by Mr. Yeshwant Shenoy, learned counsel appearing on their behalf:

> (i) The NCDRC erred in making a deduction of AED 30,000 from the total CTC of the deceased as reflected in the records produced by the employer;

(ii) An addition of thirty per cent ought to have been made towards future prospects instead of twenty-five per cent in view of the judgment of the Constitution Bench in National Insurance Company Limited v Pranay Sethi1;

(iii) The rate for conversion of AED into INR should be taken at the prevailing rate on the date of the judgment of this Court and not Rs 12.50 per AED which was the rate prevailing at the filing of the complaint before the NCDRC; and

(iv) Only the salary of the deceased has been taken and not the income. The deceased was entitled to other benefits apart from salary including employees' stock options (ESOP) and other financial benefits which have not been taken into consideration. This submission is sought to be buttressed by a communication dated 21 March 2011 of the Vice President, Human Resources of the employer to 1 (2017) 16 SCC 680 the first complainant.

7 In the companion appeal which has been filed by Air India, the submissions which have been made before the Court by Mr. Jatinder Kumar Sethi, learned counsel are thus:

(i) The NCDRC has erred in making a deduction of one-fifth towards the personal expenses of the deceased. The correct deduction ought to have been one-third since the complainants before the NCDRC were the spouse and two minor children;

(ii) Air India has paid a total amount of Rs 10.46 crores to the complainants and the mother, inclusive of interest and this would sufficiently meet the interests of justice particularly having regard to the precarious financial position of Air India; and

(iii) In addition to the deduction which was made on account of the telephone allowance, the transport allowance of AED 40,957 should also be deducted from the annual salary of the deceased in making the computation.

8 We have considered the rival submissions.

9 Both the sides have prefaced their submissions by relying on the principles which have been evolved by the Court in determining compensation under the Motor Vehicles Act, where an accident has resulted in death. The table which we have reproduced in the earlier part of the judgment would indicate that the total CTC per annum, on account of the employment of the deceased, to his employer was AED 4,82,395. This comprises of the basic pay, house rent allowance, transport allowance, telephone allowance, LTA, medical aid and gratuity. The ion which has been made by the employer in the salary of the deceased is, in our view, no reason to make any deductions from the total CTC of AED 4,82,395. The consolidated amount is the amount annually borne by the employer on account of the employment of the deceased. Hence, we are unable to accept the reasons which weighed with the NCDRC in making a deduction of AED 30,000 from the total CTC. Similarly and for the same reason, we are unable to accept the submission of Air India that the transport allowance should be excluded. The bifurcation of the salary into diverse heads may be made by the

employer for a variety of reasons. However, in a claim for compensation arising out of the death of the employee, the income has to be assessed on the basis of the entitlement of the employee. We, therefore, proceed for the purpose of computation on the basis of the annual income of AED 4,82,395.

10 The submission which has been made on behalf of the complainants is that in addition to the salary which was paid to the deceased, he was entitled to diverse benefits. These benefits have been adverted to in a letter dated 21 March 2011 of the Vice President, Human Resources of the employer. The letter indicates that in March 1999, August 1999, November 2001, February 2004 and April 2007, the deceased was given ESOPs by the employer. The letter contains the following statement:

> "As part of the Talent Development initiative in the organization, Mahendra Kodakany as a key performer was inducted in the Family Jewel Program (FJP) in the year 2006- 07 and thereby graduated to the Business Partner Program (BPP) in the year July 2007 – June 2010. As part of both the programs he was eligible for a benefit (over and above his CTC) amount of INR 4.5 Lacs per annum and INR 13.8 lacs per annum respectively."

11 The material on record does not indicate that the deceased was entitled to a specified quantum of ESOPs as a matter of right. These would be linked to performance. Apart from the letter of the employer, no evidence was produced before the NCDRC to indicate that the ESOPs were payable at a certain rate or quantum every year. These were incentives paid to the deceased. Similarly, the other financial benefits which have been adverted to in the above extract from the letter dated 21 March 2011, have not been demonstrated to be a matter of right. The letter indicates that the deceased was eligible for certain benefits on an annual basis. In the absence of cogent evidence indicating that this was a part of the salary package which was payable to the deceased as an entitlement irrespective of performance, we are not inclined to accept the submission that the incentive benefits should be added back to the income for the purposes of computation.

12 The NCDRC made a deduction of one fifth on account of personal expenses. The judgment of the Constitution Bench in Pranay Sethi which was rendered in the context of determining compensation under the Motor Vehicles Act has noted the broad principles. The submissions of both the sides in the present appeals have been premised on the judgment in Pranay Sethi. In regard to the deduction on account of personal expenses, the decision in Pranay Sethi has relied upon the earlier judgment in Sarla Verma v Delhi Transport Corporation2. In Sarla Verma, this Court held that 2(2009) 6 SCC 121 where the deceased was married, the deduction towards personal living expenses should be one-third, where the number of dependent family members is two or three; one fourth, where the number of dependent family members is four to six; and one-fifth, where the number of dependent family members exceeds six. In the present case, as the record indicates, it is the three complainants before the NCDRC and the mother who were dependent on the deceased. Hence, the appropriate deduction on account of the personal expenses should have been one-fourth and not one-fifth as determined by the NCDRC.

13 The judgment in Pranay Sethi has provided for certain additions which are to be made on account of future prospects. The conclusion in Pranay Sethi is formulated as follows:

> "59.3 While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.
>
> 59.4 In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component."

14 Paragraph 59.3 of the decision in Pranay Sethi speaks of an addition for future prospects where the deceased "had a permanent job". Paragraph 59.4 provides for an addition on account of future prospects where the deceased was "self-employed or on a fixed salary". The submission of Air India is that in the present case, the deceased did not have a permanent job and, therefore, the addition towards future prospects should under paragraph 59.4 be at the rate of twenty-five per cent since he was forty-five years and two months old on the date of the accident. The deceased was not self-employed. He was in the employment of a multi-national corporation, based in Dubai and was paid his salary in AED. The record indicates that he was a long standing employee of the employer. He had risen from the rank of a Senior Manager in July 2003 to that of a Country Head in July 2005 and finally in May 2009 as Regional Director for the Middle East. The employment of the deceased cannot be equated with that of a person on a fixed salary - within the meaning of paragraph 59.4 of Pranay Sethi. The reference to the expression "permanent job" in paragraph 59.3 is not intended to include only those individuals who are in the service of the government or industrial workmen protected by statute. The deceased was evidently, a confirmed employee of his employer. This should be entitled to adequate weightage in terms of the determination of compensation in the event of an untimely demise. We have come to the conclusion that thirty per cent should be allowed on account of future prospects.

15 On the above basis, we now proceed to compute the compensation payable to the complainants:

> (In AED)
>
> (i) Income of the deceased : 4,82,395
>
> (ii) Add 30% towards future prospects : 1,44,718
>
> (iii) Total of (i) and (ii) : 6,27,113

(iv) One fourth of income towards personal expenses : 1,56,778

(v) Balance (iii) minus (iv) : 4,70,335

(vi) Multiplier of 13 –

(vii) Total Compensation : 61,14,355 For the purpose of conversion into INR, we have adopted an exchange rate of Rs 12.5 per AED which is the rate which was adopted in the consumer complaint.

16 We are not inclined to accept the submission of the learned counsel for the complainants that the exchange rate should be that which is prevalent today. In support of the plea, learned counsel for the complainants relied on the judgments in Forasol v. O.N.G.C3 ("Forasol"), Renusagar Power Co. Ltd v General Co. Ltd4 ("Renusagar"), United India Insurance Co. Ltd v Kantika Colour Lab5 ("Kantika Colour Lab") and Balaram Prasad v Kunal Saha6 ("Balaram Prasad").

In Forasol, a French company had entered into a drilling contract with the Oil and Natural Gas Commission ("ONGC"). The contract entered into between the parties specified that ONGC shall pay 80 percent of the amount due to Forasol in French Francs and 20 percent in Indian Rupees at a fixed conversion rate. Pursuant to a Credit 3 1984 Supp SCC 263 4 1994 Supp (1) SCC 644 5 (2010) 6 SCC 449 6 (2014) 1 SCC 384 Agreement entered into between the Indian and French Government, Forasol had agreed to receive payment on a deferred basis in French Francs. Speaking for a two judge Bench of this Court, Justice D.P. Madon held thus:

> " It would be convenient if we now set out the practice, which according to us, ought to be followed in suits in which a sum of money expressed in a foreign currency can legitimately be claimed by the plaintiff and decreed by the court...In such a suit, the plaintiff, who has not received the amount due to him in a foreign currency, and, therefore, desires to seek the assistance of the court to recover that amount, has two courses open to him. He can either claim the amount due to him in Indian currency or in the foreign currency in which it was payable. If he chooses the first alternative, he can only sue for that amount as converted into Indian rupees and his prayer in the plaint can only be for a sum in Indian currency. For this purpose, the plaintiff would have to convert the foreign currency amount due to him into Indian rupees. He can do so either at the rate of exchange prevailing on the date when the amount became payable for he was entitled to receive the amount on that date or, at his option, at the rate of exchange prevailing on the date of the filing of the suit because that is the date on which he is seeking the assistance of the court for recovering the amount due to him. In either event, the valuation of the suit for the purposes of court fees and the pecuniary limit of me jurisdiction of the court will be the amount in Indian currency claimed in the suit..." (Emphasis supplied) The Court specified that in cases where the plaintiff has made a prayer for a decree to be paid to him in foreign currency and the payment is not made in foreign currency, the rate of exchange applicable would be the rate prevailing at the time of judgment:

"...The plaintiff may, however, choose the second course open to him and claim in foreign currency the amount due to him. In such a suit, the proper prayer for the plaintiff to make in his plaint would be for a decree that the defendant do pay to him the foreign currency sum claimed in the plaint subject to the permission of the concerned authorities under the Foreign Exchange Regulation Act, 1973, being granted and that in the event of the foreign exchange authorities not granting the requisite permission or the defendant not wanting to make payment in foreign currency even though such permission has been granted or the defendant not making payment in foreign currency or in Indian rupees, whether such permission has been granted or not, the defendant do pay to the plaintiff the rupee equivalent of the foreign currency sum claimed at the rate of exchange prevailing on the date of the judgment. For the purposes of court fees and jurisdiction the plaintiff should, however, value his claim in the suit by converting the foreign currency sum claimed by him into Indian rupees at the rate of exchange prevailing on the date of the filing of the suit or the date nearest or most nearly preceding such date, stating in his plaint what such rate of exchange is. He should further give an undertaking in the plaint that he would make good the deficiency in the court-fees, if any, if at the date of the judgment, at the rate of exchange then prevailing, the rupee equivalent of the foreign currency sum decreed is higher than that mentioned in the plaint for the purposes of court-fees and jurisdiction. At the hearing of such a suit, before passing the decree, the court should call upon the plaintiff to prove the rate of exchange prevailing on the date of the judgment or on the date nearest or most nearly preceding the date of the judgment. If necessary, after delivering judgment on all other issues, the court may stand over the rest of the judgment and the passing of the decree and adjourn the matter to enable the plaintiff to prove such rate of exchange. The decree to be passed by the court should be one which orders the defendant to pay to the plaintiff the foreign currency sum adjudged by the court subject to the requisite permission of the concerned authorities under the Foreign Exchange Regulation Act, 1973, being granted, and in the event of the foreign exchange authorities not granting the requisite permission or the defendant not wanting to make payment in foreign currency even though such permission has been granted or the defendant not making payment in foreign currency or in Indian rupees, whether such permission has been granted or not, the equivalent of such foreign currency sum converted into Indian rupees at the rate of exchange proved before the court as aforesaid. In the event of the decree being challenged in appeal or other proceedings and such appeal or other proceedings being decided in whole or in part in favour of the plaintiff, the appellate court or the court hearing the application in the other proceedings challenging the decree should follow the same procedure as the trial court for the purpose of ascertaining the rate of exchange prevailing on the date of its appellate decree or of its order on such application or on the date nearest or most nearly preceding the date of such decree or order. If such rate of exchange is different from the rate in the decree which has been challenged, the court should make the necessary modification with respect to the rate of exchange by its appellate decree or final order. In all such cases, execution can only issue for the rupee equivalent specified in the decree,

appellate decree or final order, as the case may be. These questions, of course, would not arise if pending appeal or other proceedings adopted by the defendant the decree has been executed or the money thereunder received by the plaintiff." (Emphasis supplied) The nature of the claim by the party attains significance. In Forasol, a major part of the claim for payment was in French Francs. The Court further took note of the fact that the party entitled to receive the payment was a foreign party. After consideration of the English authorities on the matter, it was held that the date for conversion should be the date of the judgment.

In Renusagar, a contract was executed between a company incorporated in India and a company incorporated in the US. Under the terms of the contract, the amount to be paid was expressed in US dollars. Pursuant to an international commercial arbitration conducted in terms of the New York Convention, an award was drawn up in US dollars.

A three judge Bench of this Court noted that in the field of conflict of laws, money serves a two-fold function: (i) a means of measurement; and (ii) a medium of payment.

The Court noted that both, the "money of account" and "money of payment" were in terms of US dollars. The Court affirmed the application of the law laid down in Forasol to the fact situation and rejected the plea for re-consideration of the judgment.

Both in Forasol and Renusagar, the recipients of payments were foreign parties.

Moreover, the terms of contract entered into by the parties stipulated that the payments were to be made in terms of foreign currency.

In Kantika Colour Lab, the Respondent had obtained an insurance policy to cover the risk of transit of a film processor and printer processor from Mumbai to Haridwar. The printer suffered extensive damage during transit and the Respondent sought damages from the insurer. After coming to the conclusion that the printer could not be repaired, the Court was to determine the cost of replacement. In determining it, a two judge Bench of this Court held that the cost should be ascertained as the cost of replacement along with the customs duty component at the rupee equivalent of the exchange rate prevalent on the date of judgment.

In Balaram Prasad, the Court had to determine the compensation to be awarded to the husband of the deceased as a result of the death of his wife due to medical negligence in India. The claimant as well as the deceased were non-resident Indians. The two judge Bench of this Court accepted the plea of the claimant that the value of the rupee had depreciated since the commencement of legal proceedings and in computing the compensation, regarded the current value of the rupee of a stable rate

of Rs 55 per USD.

17 The facts in the context of which the above judgments were rendered are distinguishable from the present case. The money is not being repatriated abroad. The claimants are Indian residents. The complaint contains a claim for payment in Indian Rupees. They would be receiving the payment in Indian rupees. Moreover, we are allowing the claim for interest in terms of the decision of the NCDRC.

18 The total amount which is payable on account of the aforesaid heads works out to Rs 7,64,29,437. Interest at the rate of nine per cent per annum shall be paid on the same basis as has been awarded by the NCDRC. The balance, if any, that remains due and payable to the complainants, after giving due credit for the amount which has already been paid, shall be paid over within a period of two months from the date of receipt of a certified copy of this order. In the event that the amount which has been paid by Air India is in excess of the amount payable under the present judgment in terms of our above order, we direct under Article 142 of the Constitution, that the excess, if any, shall not be recoverable from the claimants.

19 The appeals are accordingly disposed of. There shall be no order as to costs.

Pending application(s), if any, are disposed of.

……J. [Dr Dhananjaya Y Chandrachud]
.....J. [Ajay Rastogi] New Delhi;

March 03, 2020.

ITEM NO.13 COURT NO.8 SECTION XVII-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

TRIVENI KODKANY & ORS. Appellant(s)

VERSUS

AIR INDIA LTD. & ORS. Respondent(s)

(With appln.(s) for exemption from filing c/c of the impugned judgment)

WITH C.A. No.5862/2019 (XVII-A)
(With appln.(s) for ex-parte ad-interim relief)

Date : 03-03-2020 These matters were called on for hearing today. CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD HON'BLE MR. JUSTICE AJAY RASTOGI For Appellant(s) Mr. Yeshwanth Shenoy, Adv.

Mr. Prashant Padmanabhan, AOR Mr. Asish Sarkar, Adv.

CA 5862/2019	Mr. Shikhil Suri, Adv. Mr. Shiv Kumar Suri, AOR
For Respondent(s)	Mr. Yeshwanth Shenoy, Adv. Mr. Prashant Padmanabhan, AOR Mr. Asish Sarkar, Adv.
CA 2914/2019	Mr. Jatinder Kumar Sethi, Dy.AG Mr. Saswat Pattnaik, Adv. Mr. Shikhil Suri, Adv. Ms. Shilpa Saini, Adv. Mr. Shiv Kumar Suri, AOR

UPON hearing the counsel the Court made the following O R D E R The appeals are disposed of in terms of the signed reportable judgment.

Pending application(s), if any, stand disposed of.

(Chetan Kumar) (Saroj Kumari Gaur)
A.R.-cum-P.S. Court Master
(Signed reportable judgment is placed on the file)