

IN THE HIGH COURT OF BOMBAY AT GOA
MISC. CIVIL APPLICATION NO. 759 OF 2017
IN
FIRST APPEAL NO. 104 OF 2013

1. Merlin Betu D' Souza,
Wife of late Xavier Cruz Fernandes
2. Mast. Steve Ansley Fernandes,
Aged 2 years, son of late Xavier
Cruz Fernandes,
3. Miss Shenora Jenica Fernandes,
Aged 5 months, daughter of
late Xavier Cruz Fernandes

The appellants nos. 2 and 3 are minors
represented by the claimant no.1
As legal guardian

All residents of House No. 79,
Danda, Verna,
Salcete, Goa.

..... Appellants

V e r s u s

1. Vikas Kurtikar
Son of Premanand Kurtikar,
(deceased) through his LR
Pragati P. Kurtikar,
H. No.311, Khariabhat,
Carambolim, Ilhas, Goa.

2. Prashant Gaude
s/o Ankush Gaude,
House No. 118/1, Old Goa,
Owner of Mahindra Jeep,
No. GA-01-T-6254

3. The New India Assurance Company Ltd.
Having its divisional office at Velho Building,
Panaji, Goa.

..... Respondents

Mr. John A. Lobo, Advocate for the Appellants.

Mr. E. Afonso, Advocate for the Respondent no. 3.

Coram :- M. S. JAWALKAR, JJ.

Order reserved on : 8th October, 2020

Order pronounced on: 16th October, 2020

ORDER

1. Heard Mr. Lobo, learned Counsel for the appellants and Mr. E.

Afonso, learned Counsel for the respondent no.3.

2. The present application is filed by the applicant to produce additional evidence under Order 41 Rule 27 of the Code of Civil Procedure. It is submitted that the learned Claims Tribunal whilst

deciding Claim Petition, held that “*First and foremost, the claimants had established the age and also the employment of Xavier as a Baker overseas from the agreement produced through Fondekar, Aw.3. Issue no5 is thus partly answered in the affirmative.*” However, learned Tribunal held that Aw.1, wife of deceased had not produced copy of the passport and other contemporaneous record to show his journey over years and/or the remittance made by him of the earnings from time to time. It is submitted that from the document which applicant intended to produce on record i.e. passport of deceased, it will be clear that he joined duties at Afghanistan as per the agreement which is duly proved by the claimant and, therefore, there was no reason for holding notional income of the deceased as ₹ 5,000/- per month. He submitted further that it is the public document and it will enable to pronounce the judgment.

3. The learned Counsel for the respondent submitted that there is no reason whatsoever mentioned in the application why it was not

produced before the Claims Tribunal. Applicant can produce document as additional document only if it was not within his knowledge at the relevant time or though he applied for production, Trial Court rejects the same and, therefore, requested to reject the application.

4. In my considered opinion, being beneficial legislation and passport being public document issued by Union of India, it will definitely enable this Court to come to the conclusion that deceased really had been to Afghanistan and joined the duties. Otherwise also, reason for non-consideration of salary mentioned in the agreement, appears to be the want of passport to show that he had actually joined the duties and other contemporaneous documents. It is submitted by learned Counsel for appellant that it had already come on record in the evidence of claimant that after the said accident, she is residing along with her parents and, therefore, in such circumstances, it would not be possible for her to produce all the documents on record and it needs

consideration specifically when agreement is duly proved by the claimants through Aw.3.

5. In such circumstances, I am inclined to allow the application to produce copy of passport on record. The learned Counsel placed on record original copy of passport. If there is anything to submit on the said copy of passport, it is open for the respondent-insurance company to submit or to lead any evidence, if required.

6. Accordingly, I proceed to pass the following :

ORDER

(i) The application is allowed.

(ii) The appellant is permitted to place on record passport of deceased Xavier Cruz Fernandes as on additional evidence for consideration while deciding appeal.

(iii) Respondent is at liberty to submit in reply or to lead evidence if required.

M. S. JAWALKAR, J.

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