

Kumaran Vs. Radakrishnan and Others

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Court : Kerala

Decided On : Dec-20-2012

Judge : Honourable Mr.Justice K.T.Sankaran

Appellant : Kumaran

Respondent : Radakrishnan and Others

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE K.T.SANKARAN & THE HONOURABLE MR.JUSTICE M.L.JOSEPH FRANCIS THURSDAY, THE 20TH DAY OF DECEMBER 2012 29TH AGRAHAYANA 193 MACA.No. 183 of 2008 ()

----- OPMV.1053/2000 of MACT, IRINJALAKUDA APPELLANT/PETITIONER: ----- KUMARAN, VAZHAKKAD HOUSE, PERUVAMBU POST, PALAKKAD DIST. BY ADV. SRI.T.N.MANOJ RESPONDENTS/RESPONDENTS: ----- 1. RADAKRISHNAN, KANAKKASSERY HOUSE, KUNNAPILLY, MELOOR POST CHALAKUDY VIA.

2. JOY, S/O. OUSEPH, PARAKKATTIL HOUSE, CHATTIKULAM POST, KAMMALAM CHALAKUDY VIA.

3. THE MANAGER, NEW INDIA ASSURANCE CO. LTD., THRISSUR. R3 BY ADV. SRI.P.G.GANAPPAN THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 20-12-2012, THE COURT ON THE SAME DAY

DELIVERED THE FOLLOWING: K.T.SANKARAN & M.L.JOSEPH FRANCIS JJ., -
----- M.A.C.A. No.183 of 2008 D -----
----- Dated this the 20th day of December, 2012 JUDGMENT
K.T. Sankaran J., The appellant is the claimant in O.P.(M.V.) No.1053 of 2000 on
the file of Motor Accidents Claims Tribunal, Irinjalakuda. The appellant claimed a
sum of `5,00,000/- as compensation. The Tribunal passed an award for a sum of
`55,700/-, which is under challenge in this appeal.

2. The appellant was working as a cleaner in a lorry owned by the first respondent. It is alleged that on 8.9.1999, while the appellant was giving signal to the second respondent (driver of the lorry) to take the lorry in the reverse direction, the driver of the lorry drove the lorry in a rash and negligent manner and hit on the appellant. The appellant sustained severe injuries. He M.A.C.A. No.183 of 2008 :2: was admitted in the Thrissur Heart Hospital, where he was treated as an in-patient for 21 days. Thereafter he was admitted in Amala Hospital, Thrissur where he was treated as inpatient for 36 days. The appellant contended that as a result of the injuries sustained by him in the accident, he had sustained 55% permanent disability as certified by the Medical Officer in Ext.A8 disability certificate. It was alleged by the appellant that his right upper limb has become functionless as a result of the injuries sustained by him in the accident.

3. The Tribunal did not rely on Ext.A8 disability certificate on the ground that the Doctor who issued the same was not examined. It is stated in the memorandum of appeal that both the parties agreed that the documents could be marked and that was the reason why the appellant did not adduce any evidence and examine the doctor as a witness. The appellant has produced his M.A.C.A. No.183 of 2008 :3: photographs along with the Memorandum of Appeal which would prima facie show that he has sustained considerable disability. However, we do not think that it would be proper to fix the percentage of the disability only on the basis of the photographs produced by the appellant. We are of the view that an opportunity should be given to the appellant to adduce oral evidence and to examine the Doctor who issued Ext.A8 disability certificate. We are also of the view that if necessary, the appellant can apply for sending himself for examination by a Medical Board.

4. The appellant contended that he was earning `2,000/- per month. The Court below held that his monthly income can be taken as `1,500/-. No reasons are stated for arriving at the figure of `1,500/-. We think that it would be proper to accept the contention of the appellant that he was earning `2,000/- per month. M.A.C.A. No.183 of 2008 :4:

5. The Tribunal did not award any amount as compensation for the disability for the reason that according to the Tribunal the disability was not proved. The appellant was aged 26 years at the time of the accident and if disability is proved, the multiplier to be adopted for fixing the compensation for disability would be 18.

6. Though the appellant claimed a sum of `1,25,000/- for medical expenses, the Tribunal did not grant any amount under the said head since the appellant failed to produce any medical bills. We are of the view that an opportunity should be granted to the appellant to produce the documents to prove medical expenses.

7. The Tribunal also granted amount under different heads, which according to us is too low.

8. It is seen from the grounds raised in the M.A.C.A. No.183 of 2008 :5: memorandum of appeal and also Annex.A (copy of the witness schedule) that the appellant wanted to examine witnesses. In these circumstances, we are inclined to accept the contention put forward by the appellant that he did not adduce any evidence under the honest belief that the disability certificate was marked without objection.

9. For the aforesaid reasons, we are of the view that the matter requires re-consideration by the M.A.C.T. Accordingly the appeal is allowed and the award passed by the Tribunal is set aside and the case is remanded to the M.A.C.T., Irinjalakuda for fresh disposal. It is made clear that the monthly income of the appellant shall be taken as `2,000/- and if disability is proved, the multiplier to be adopted is 18. The Tribunal shall consider the materials on record and the oral and documentary evidence that may be adduced by both the parties after M.A.C.A. No.183 of 2008 :6: remand and pass a reasoned award fixing the just and reasonable compensation payable to the appellant. The parties shall appear

before the M.A.C.T, Irinjalakuda on 11.2.2013. K.T. SANKARAN, (JUDGE) M. L. JOSEPH FRANCIS, (JUDGE) dl/

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