Sanoj Vs. Vinod

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Court : Kerala

Decided On : Feb-01-2013

Judge : Honourable Mr.Justice S.Siri Jagan

Appellant : Sanoj

Respondent : Vinod

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE S.SIRI JAGAN & THE HONOURABLE MR.JUSTICE K.HARILAL FRIDAY, THE 1ST DAY OF FEBRUARY 2013 12TH MAGHA 193 MACA.No. 2108 of 2008 ( ) ------------------------ (AGAINST THE JUDGMENT IN OP(MV).NO.683/2002 OF MOTOR ACCIDENTS CLAIMS TRIBUNAL, IRINJALAKUDA DATED 03 03-2008) ------------------------------------ APPELLANT/PETITIONER IN OP(MV): -- SANOJ, S/O. PARAKKULAM RAMAKRISHNAN, KURUMASSERY DESOM, PARAKKADAVU VILLAGE, ERNAKULAM DISTRICT. BY ADVS.SRI.P.V.BABY SRI.A.N.SANTHOSH RESPONDENT(S)/RESPONDENTS OP(MV): --- 1. VINOD, S/O. MOOKKOLI KUTTAPPAN, KURUMASSERY.

2. T.C.RAJAN, S/O.THAIPARAMBIL CHANDRAN, KURUMASSERY P.O., PARAKADAVU (VIA).

3. THE NEW INDIA ASSURANCE CO.LTD., ALUVA. R1 & R2 BY ADV. SRI.AYPE JOSEPH SRI.ANIL S.RAJ SMT.K.N.RAJANI SMT.ANILA PETER R3 BY ADV. SRI.RAJAN P.KALIYATH THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 01-02-2013, ALONG WITH MACA.NO. 1695/2010, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: sts S.SIRI JAGAN & K.HARILAL, JJ -------------------------------------- M.A.C.A. Nos. 2108 OF 200.& 1695 OF 201.-------------------------------------- Dated this the 1st day of February, 2013.

JUDGMENT

S.Siri Jagan, J.

These two M.A.C.As arise from the same award of the Motor Accidents Claims Tribunal, Irinjalakkuda, in OP(MV) No.683/2002. M.A.C.A. No. 2108/2008 is filed by the claimant in that original petition and M.A.C.A. No.1695/2010 is filed by the 2nd respondent-owner of the vehicle, negligent driving of which gave rise to the claim in the OP(MV). The claimant was seriously injured in a motor accident involving the vehicle owned by the 2nd respondent, driven by the 1st respondent and insured with the 3rd respondent. The claimant filed the OP(MV), claiming compensation for the injuries and consequent disabilities suffered by him in the accident. The claimant was 24 years old at the time of accident. He claimed to be a driver by profession. He further claimed that he was earning a monthly income of Rs.4,500/-. He suffered the following injuries in the accident: M.A.C.A. Nos. 2108 OF 200.& 1695 OF 201.2 "deformity and swelling of the left thigh, lacerated wound 5x3x2 cm. over the lateral aspect of the lower half of the left leg, small lacerated wound 1x.5x.25 cm. over the left side of fact, and another small laceration.5x.5cm. over the left forehead. x-ray investigation revealed fracture of the shaft of left femur, fracture of the inferior pole of left patella, fracture of tibial tuberosity left side, posterior dislocation of left hip and dislocation of the right big toe." He produced Ext.A5 disability certificate, which certified 29% permanent disability. The Tribunal, after finding negligence on the part of the driver of the offending vehicle, fixed the monthly income of the claimant as Rs.2,000/- per month, in the absence of any reliable evidence regarding the monthly income of the claimant. But the Tribunal accepted only 10% disability as the whole body disability suffered by the appellant and awarded compensation taking the multiplier of 17. The Tribunal awarded Rs.20,000/- towards compensation for pain and sufferings and Rs.8,000/- towards compensation for discomfort and loss of amenities. Altogether, a total compensation of Rs.1,32,800/- (Rupees One Lakh Thirty Two Thousand Eight Hundred only) was awarded with interest and costs. The vehicle in question was a goods vehicle. The owner of the tempo van was also driving the M.A.C.A. Nos. 2108 OF 200.& 1695 OF 201.3 vehicle, who is the appellant in M.A.C.A. No.1695/2010. The claimant was also allowed to drive the same tempo van. The Tribunal found that the claimant is not covered by the Act policy taken by the owner of the vehicle in respect of the vehicle and absolved the insurance company from the liability. That award is under challenge at the instance of the claimant as well as the owner of the vehicle. The claimant seeks enhancement of compensation also under three heads namely, loss of earning capacity, compensation for pain and sufferings and that for discomfort and loss of amenities. The owner of the vehicle challenges the very same award on the question of insurance coverage and on the question of quantum of compensation awarded.

2. Both the appellants in the two appeals contend that the Tribunal went wrong in absolving the insurance company from liability. The contention is that under Section 147(1)(b)(i) of the Motor Vehicles Act, the owner of the goods carriage in the vehicle or his authorised representative is also covered under the act policy. The contention is that the claimant was actually travelling in the vehicle as a representative of the owner of the goods and M.A.C.A. Nos. 2108 OF 200.& 1695 OF 201.4 by virtue of Section 147(1)(b)(i) of the Act, he is also liable to be covered under the policy. He further submits that after accepting the disability certificate certifying 29% disability, the Tribunal went wrong in accepting only 10% disability for the purpose of calculating loss of earning capacity. The submission is that the Tribunal himself entered a finding that the claimant's left leg was practically disabled. That being so, his avocation as a driver would be very seriously affected and in fact it would be affected by more than 50%, because of which the Tribunal went wrong in limiting the percentage of disability to 10% for calculating the loss of earning capacity, is the contention. It is further submitted that the claimant was in the hospital for 28 days and even thereafter, he was continuing treatment. Therefore the compensation of Rs.20,000/- for pain and sufferings is palpably

inadequate. It is also contended that after finding that his left leg is practically disabled, the Tribunal went wrong in limiting the compensation for loss of amenities to Rs.8,000/-. While supporting the claimant on the question of insurance coverage, the appellant in M.A.C.A. No.1695/2010 submits that the amount awarded by the Tribunal is excessive and is liable to be reduced. M.A.C.A. Nos. 2108 OF 200.& 1695 OF 201.5 3. The learned counsel for the insurance company opposes the appellants on both counts. He would submit that under Section 147(1)(b)(i), only the owner or his authorised representative accompanying the goods carried in the vehicle can claim coverage by an Act policy. He relies on the decision of Supreme Court in Sanjeev Kumar Samrat v. National Insurance Company Ltd. 2013(1)KLT 4.SC. He also submits that the compensation awarded by the Tribunal is just and reasonable and does not warrant any interference at the hands of this Court.

4. We have considered the rival contentions in detail. We note that in this case, the owner of the goods transported in the vehicle happens to be the owner of the vehicle itself. It is also an admitted case that the said owner was driving the vehicle. It is also admitted that the claimant was also travelling in the very same vehicle. Section 147(1)(b)(i) reads thus. "147. Requirements of policies and limits of liability.- (1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which- (a) is issued by a person who is an authorised insurer; and (b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2)- M.A.C.A. Nos. 2108 OF 200.& 1695 OF 201.6 (i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person, including owner of the goods or his authorised representative carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place:" We are of opinion that for coverage under Section 147(1)(b)(i), either the owner of the goods carried in the vehicle or his authorised representative accompanying the goods, only is entitled to be covered by the Act policy. If a person has to represent the owner, this owner cannot accompany the goods. If the owner is actually accompanying the goods, it is not necessary to anybody to represent him. As such, if the owner is actually accompanying the goods, there is no question of coverage of the representative also under Section 147(1)(b)(i). In this view, I am

supported by the decision of the Supreme Court in Sanjeev Kumar's case (supra). Therefore, we are satisfied that the Tribunal has rightly absolved the insurance company from liability holding that the claimant is not entitled to be covered by insurance by virtue of Section 147(1)(b)(i) of the Motor Vehicles Act.

5. Coming to the question of quantum of compensation, we M.A.C.A. Nos. 2108 OF 200.& 1695 OF 201.7 are of opinion that the Tribunal went wrong in taking only 10% as the percentage of disability for the purpose of calculating loss of earning power. We have already noted the injuries suffered by the claimants. The Tribunal had actually seen the claimant in court and entered the following finding in respect of his physical condition. "Under different split up figures for the limb disability on different grounds the doctor has certified 29%. Of course this court is well satisfied that the petitioner has presently some physical difficulties, and in open court this court could notice the present condition of the petitioner that his left leg is disfigured and practically disabled." After having found that the claimant's left leg is disfigured and practically disabled, we fail to understand how the Tribunal could deviate from 29% disability certified by Ext.A5. The claimant is a driver by profession. His left leg is an important part of his body which would assist him in his avocation as a driver. If the left leg is practically disabled, his loss of earning power, because of the disability, would be much more than 50%. That being so, when the doctor certified 29% physical disability, the Tribunal went wrong in limiting the percentage of disability to 10% for calculating loss of earning capacity. Therefore, we are inclined to M.A.C.A. Nos. 2108 OF 200.& 1695 OF 201.8 grant the claimant, compensation for loss of earning capacity by adopting the percentage of disability as 29% itself. Consequently, taking 29% as the percentage of disability for calculating loss of earning power under the head of loss of earning capacity, the claimant would be entitled to Rs.1,18,320/- (One Lakh Eighteen Thousand Three Hundred and Twenty only) instead of Rs.40,800/- granted by the Tribunal. Therefore, under this head, the claimant would be entitled to Rs.77,520/- as additional compensation. Despite the injuries noted above, we are not persuaded to hold that the amount of Rs.20,000/- awarded as compensation for pain and suffering is low. We are satisfied that the same is just compensation for pain and suffering. But we feel that the compensation of Rs.8,000/- granted for discomfort and loss of amenities in life is on the lower side.

When the appellant has practically lost the use of his left leg, he will suffer great difficulty for doing his day to day activities which any other human being is expected to do. Therefore, we are inclined to increase the same to Rs.25,000/-. Consequently the claimant is entitled to Rs.17,000/- more under this head. Adding together, the claimant would be entitled to M.A.C.A. Nos. 2108 OF 200.& 1695 OF 201.9 additional compensation of Rs.94,520/- (Rupees Ninety Four Thousand Five Hundred and Twenty only). The said amount would carry interest at the rate of 9% per annum from the date of the claim petition till the date of payment. Since insurance company has been absolved from the liability, the owner who is the appellant in M.A.C.A. No.1695/2010 will pay the additional compensation also. In the result, M.A.C.A. No.1695/2010 is dismissed and M.A.C.A. No. 2108/2008 is disposed of as above. Sd/- S.SIRI JAGAN,JUDGE Sd/- K.HARILAL, JUDGE sd