

Udayan Vs. Sivaprakash

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Court : Kerala

Decided On : Feb-04-2013

Judge : Honourable Mr.Justice Harun-Ul-Rashid

Appellant : Udayan

Respondent : Sivaprakash

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE HARUN-UL-RASHID MONDAY, THE 4TH DAY OF FEBRUARY 2013 15TH MAGHA 193 MACA.No. 1890 of 2010 ()
----- AGAINST THE AWARD IN OPMV.1442/2004 of ADDL.MOTOR ACCIDENTS CLAIMS TRIBUNAL ALAPPUZHA DATED 03 03-2009 APPELLANT(S)/PETITIONER: -----

UDAYAN,S/O.NARAYANAN, DIVYALAYAM, KADAKKARAPALLY PO, CHERTALA. BY ADV. SRI.T.B.SARASAN RESPONDENT(S)/RESPONDENT: -----
1. SIVAPRAKASH S/O.THANKAPPAN, KUTTIKATTUCHIRAYIL VEEDU, CMC-I CHERTALA.

2. K.JAYAKUMAR, KUTTIKATTUCHIRAYIL VEEDU, CMC-I, CHERTALA.

3. THE NEW INDIA ASSURANCE CO.LTD, REPRESENTED BY ITS BRANCH MANAGER, ALLEPPEY. R1 & R2 BY ADV. SRI.K.RAMANATHAN R3 BY ADV. SRI.K.C.SANTHOSHKUMAR THIS MOTOR ACCIDENT CLAIMS APPEAL

HAVING COME UP FOR ADMISSION ON 04-02-2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: al/- HARUN-UL-RASHID,J.

----- M.A.C.A No.1890 OF
201.----- Dated this the 4th day of February
2013 JUDGMENT The claimant in O.P.(MV) No.1442/2004 on the file of the Motor
Accidents Claims Tribunal, Alappuzha is the appellant. The appeal is directed
against the award dated 3.3.09 in the original petition.

2. The Tribunal allowed the claimant to recover a sum of Rs. 4875/- with 7.5% interest p.a. The Tribunal found that the accident was occurred due to the contributory negligence of both the first respondent and the claimant and the respective negligence was found to be 50:50.

3. The respondents 1,2 and 3 before the Tribunal are respectively, the driver, owner and insurer. The Tribunal assessed a total amount of Rs. 9,750/- as compensation and found that the claimant is entitled to 50% of the above amount. Ext.A2 is the wound certificate. Ext.A6 is the discharge summary. Ext.A6 shows that petitioner suffered fracture of greater tuberosity of right humerus and there was extraction of his two teeth. The claimant was treated in the Taluk Hospital, Cherthala, as inpatient for four days. The Tribunal observed that there was no reference to any M.A.C.A.1890/2010 2 fracture or extraction of teeth in the charge sheet and that regarding extraction of teeth there is some doubt. According to the Tribunal, if, as a matter of fact, there was a fracture and extraction of teeth, the police could have collected the certificates from the doctors. It was not done. The court further observed that normally, in a fracture case, there will be some reference in the wound certificate. The court also observed that "reading the police records and the medical records I entertain a genuine doubt which justifies an inference that there was no fracture as such". For the said reason, the Tribunal held that the petitioner is entitled to reasonable compensation for the injuries sustained as revealed from the wound certificate. The appellant submits that the finding of the Tribunal that it entertain a genuine doubt which justifies an inference that there was no fracture as such is without any basis. The claimant was admitted in the hospital on 16.8.2004 and on 17.8.2004 X-ray was taken. Endorsements of

the doctor on 17.8.2004 show fracture of greater tuberosity of right humerus. The court below without any justifiable reason and without application of judicial mind, found that no fracture is caused to the appellant/petitioner.

4. It is contended that the amount awarded for loss of earning is very low and unreasonable. Adequate compensation M.A.C.A.1890/2010 3 was not awarded for the injuries sustained in the accident. The appellant could not open the shop for six months. It is submitted that compensation was assessed not on the basis of the injury and loss caused under various heads. It is also submitted that the finding of 50% contributory negligence against the petitioner is also without any basis. No sustainable reasons are stated for the said findings. It is submitted that offending vehicle hit on the back side of the cycle which the petitioner was riding and that he was riding his bicycle about touching the yellow line. In the circumstance, the appellant contended that finding fault with the appellant and fixing negligence on the part of the petitioner cannot stand.

5. Ext.A6 discharge summary shows that the claimant suffered fracture of greater tuberosity of right humerus and there was extraction of two of his teeth. The Tribunal did not accept the case of the petitioner observing that the learned Judge entertain a genuine doubt which justifies an inference that there was no fracture as such.

6. The Tribunal also held that the accident was occurred due to the contributory negligence of the claimant. While discussing the issue, the Tribunal held that there was nothing to show that the petitioner was riding under the influence of alcohol which is required to exonerate the rider. The Tribunal also observed that M.A.C.A.1890/2010 4 contributory negligence can be attributed to the claimant who was riding on his bicycle for not keeping the proper track and that is because of the reason that he was riding after consuming alcohol. The finding of the court below that there is contributory negligence, that the finding that the Tribunal entertain a genuine doubt which justifies an inference that there was no fracture as such are liable to be interfered for the reason that the said findings are arrived not on the basis of legal evidence. In the result, the appeal is allowed. The impugned award is set aside. The case is remanded to the Tribunal for fresh consideration.

Sd/- HARUN-UL-RASHID JUDGE al/-

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