

Ajmal M.J. Vs. Roy Augustine

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Court : Kerala

Decided On : Jul-24-2013

Judge : Honourable Mr.Justice S.Siri Jagan

Appellant : Ajmal M.J.

Respondent : Roy Augustine

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE S.SIRI JAGAN & THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN WEDNESDAY, THE 24TH DAY OF JULY 2013 2ND SRAVANA, 193 MACA.No. 184 of 2009 () ----- AGAINST THE AWARD IN OPMV 2353 2002 of M.A.C.T.,KOZHIKODE DATED 01 02-2008 APPELLANT(S)/PETITIONER IN OPMV::

----- AJMAL.M.J., S/O.JAMAL, AGED 2 YEARS, MUKKATH HOUSE, P.O.ATHIODY,VIA. BALUSSERY KOZHIKODE DISTRICT. BY ADV. SRI.K.M.JAMALUDHEEN RESPONDENT(S)/RESPONDENTS IN OPMV::

----- 1. ROY AUGUSTINE, S/O.AUGUSTINE, KANIYARAKATH HOUSE, KALLANODE P.O., KOZHIKODE.

2. UNITED INDIA INSURANCE CO.LTD., DIVISIONAL OFFICE-3, JOSE TRUST BUILDING CHITTOOR ROAD, KOCHI. R2 BY ADV. SMT.M.LALITHA NAIR R1 BY ADV. SRI.P.R.SREEJITH THIS MOTOR ACCIDENT CLAIMS APPEAL

HAVING BEEN FINALLY HEARD ON 24-07-2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: S.SIRI JAGAN & K.RAMAKRISHNAN, JJ.

===== M.A.C.A.No. 184 of 2009 ===== Dated this the 24th day of July, 2013

JUDGMENT

Ramakrishnan, J.: The claimant, a minor, represented by guardian in O.P. (M.V).No.2353/2002 on the file of the Motor Accidents Claims Tribunal, Kozhikode, is the appellant herein. The appellant filed the claim petition before the Tribunal claiming compensation for the injuries and consequential disability sustained by him in a motor vehicle accident caused on account of the rash and negligent driving of a vehicle owned and driven by the 1st respondent and insured with the 2nd respondent. After considering the evidence on record, the Tribunal found that the accident occurred because of the negligent driving of the vehicle by the 1st respondent and awarded a total compensation of ` 27,000/- under various heads as follows: Amount Head of claim awarded ` 1 Medical treatment 10,000.00 2 Incidental charges 3,000.00 3 Pain and suffering 8,000.00 4 Loss of amenity 5,000.00 5 Transportation 1,000.00 6 Total 27,000.00 m.a.c.a.184/09 - :

2. :- Dissatisfied with the quantum of compensation awarded, the appellant has come before this Court with the above appeal.

2. We have heard the learned counsel for the appellant and the learned Standing Counsel for the insurance company.

3. The learned counsel for the appellant submitted that though the medical board assessed as 10% disability, that was not taken note of by the Tribunal for assessing compensation under the head, loss of earning capacity, and also for loss of earning power. Further, the Tribunal has rejected the major medical bills and awarded only a small amount towards medical expenses. He was treated as inpatient for 39 days. But no amount was awarded under the head, bystander's expenses. The amount awarded under the head, pain and suffering, is also palpably low. So, according to the learned counsel for the appellant, the appellant is entitled to enhancement on all heads.

4. On the other hand, the learned Standing Counsel for the insurance company submitted that the Tribunal has considered and given valid reasons for not accepting the medical board's disability certificate and the amount awarded is perfectly justifiable in the absence of convincing evidence adduced on the side of the appellant regarding his disability by other means. So m.a.c.a.184/09 - :

3. :- no interference is called for by this Court.

5. We have considered the rival contentions of both sides.

6. It is an admitted fact that the appellant was a minor at the time when the accident occurred and he was only 16 years old at that time. It is also seen from the medical records produced that he was treated as inpatient for 38 days. But no amount was awarded under the head, bystander's expenses. As somebody must be there with the injured to look after him during the period of treatment as inpatient, he ought to have incurred some amount for the purpose of and so, we award an amount of ` 4000/- under the head, bystander's expenses. In the wound certificate it was noted that he sustained fracture (L) femur and it was issued from the community health centre. Thereafter, he went to medical college. Though in the diagnosis portion, it was noted as comminuted fracture upper 1/3rd middle 1/3rd femur (R) leg, but in the inner portion of the discharge record, it was specifically mentioned that he sustained comminuted fracture shaft of femur (L) (SOF). It is true that in the documents issued from the Chest Hospital it was shown as fracture femur. But we will have to rely on the certificate issued m.a.c.a.184/09 - :

4. :- from the medical college hospital, where he had gone for the first time after the accident for follow up treatment and there it was specifically mentioned he sustained fracture to shaft of left femur and the disability certificate issued by the medical board of medical college considering these documents and the disability was assessed as 10%. So non-accepting Ext.C1 disability certificate for the reason stated by the Tribunal appears to be not correct in view of the discussion made by us in this judgment. So we are taking 10% disability for the purpose of considering the fact of his loss of amenities in life. But that does not mean that he may be having occupational disability to that extent for which purpose, we take

only 5% disability. Since he is a minor, we are taking the notional income as ` 15,000/-. Taking the multiplier as 18 and occupational disability as 5%, he will be entitled to get an amount of ` 13,500/- under the head, loss of earning capacity and we are awarding that amount under that head. Considering the nature of injuries and treatment undergone and also considering his age, he might have suffered severe pain. So we enhance the amount under the head, pain and suffering to ` 15,000/- instead of ` 8,000/- awarded by the Tribunal. The Tribunal has only awarded only ` 5,000/- under the m.a.c.a.184/09 - :

5. :- head, loss of amenities in life. Considering the fact that he sustained permanent disability of 10% he may have some personal inconvenience in his life for remaining period with this difficulty. So we award a further amount of ` 10,000/- more under the head, loss of amenities. We are not inclined to interfere with the amount awarded under the other heads because the Tribunal has considered each and every aspect in detail and we do not find any reason to enhance the amount under the other heads. In all the appellant will be entitled to an additional compensation of ` 34,500/- over and above what has been awarded by the Tribunal, which the 2nd respondent is liable to pay with 9% interest from the date claim petition till date of payment. With the above modification of the impugned award of the Tribunal, this appeal is disposed of. Sd/- S.SIRI JAGAN, JUDGE Sd/- sdk+ K.RAMAKRISHNAN, JUDGE ///True copy/// P.A. To Judge. m.a.c.a.184/09 - :

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