

Rathi Vs. K.K.Ramu

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Court : Kerala

Decided On : Sep-04-2013

Judge : Honourable Mr.Justice Thomas P.Joseph

Appellant : Rathi

Respondent : K.K.Ramu

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE THOMAS P.JOSEPH WEDNESDAY, THE 4TH DAY OF SEPTEMBER 2013 13TH BHADRA, 1935 MACA.No. 1249 of 2012 ()
----- AWARD IN OPMV7452004 of MACT, IRINJALAKUDA DATED 08-02-2012 APPELLANTS/2ND and 3RD PETITIONER:
----- 1. RATHI W/O.LATE BALAN, PARIPPIL HOUSE, PORUMBAKUNNU DESOM PUTHENCHIRA VILLAGE, THRISSUR DISTRICT.

2. MATHU @ MADHAVI M/O.LATE BALAN, PARIPPIL HOUSE, PORUMBAKUNNU DESOM PUTHENCHIRA VILLAGE, THRISSUR DISTRICT.
BY ADV. SRI.V.BINOY RAM RESPONDENT(S)/RESPONDENTS:
----- 1. K.K.RAMU S/O.KUNJIKORAN, VARIYATHKUNNIL PARAMBIL HOUSE KIZHAKKUMMURY DESOM, PUTHENCHIRA VILLAGE THRISSUR DISTRICT, PIN - 680 682.

2. BABU P.D. POLEKKATTU HOUSE, PUTHENCHIRA P.O., THRISSUR DISTRICT PIN - 680 682.

3. THE BRANCH MANAGER THE NEW INDIA INSURANCE CO.LTD., MAIN ROAD IRINJALAKUDA, PIN - 680 121.

4. BAIJU @ SAIJU S/O.VIJAYAN @ VIJAYAKUMAR, MAKKATTIL HOUSE PUTHENCHIRA DESOM & VILLAGE, THRISSUR DISTRICT PIN - 680 682.

5. M.C.DEVASSYKUTTY MANJALY HOUSE, VELLANCHIRA P.O., KAROOR PIN - 680 683.

6. THE BRANCH MANAGER THE ORIENTAL INSURANCE CO.LTD., SOUTH JUNCTION CHALAKUDY, PIN - 680 307. R6 BY ADV. SRI.VPK.PANICKER R3 BY ADV. SRI.RAJESH THOMAS R6 BY SRI.GEORGE CHERIAN (THIRUVALLA) R3 BY SRI.A.A.ZIYAD RAHMAN THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 04/09-2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: THOMAS P.JOSEPH, J.

===== M.A.C.A.No.1249 of 2012
===== Dated this the 04th day of September, 2013

JUDGMENT

Third respondent appears through counsel. Notice to other respondents is dispensed with in view of the decision I propose to take. First respondent is reported to be dead. Steps against legal representatives of the first respondent is not necessary in view of the decision I propose to take.

2. First petitioner in the claim petition suffered injuries in a motor accident on 09.12.2003. He claimed compensation from the respondents (first respondent is reported to be dead) in O.P(M.V). No.745 of 2004 of the Motor Accident Claims Tribunal, Irinjalakkuda (for short, "the Tribunal"). The Tribunal found that the accident occurred due to the negligence of the deceased first respondent who was driving the offending autorikshaw at the relevant time and found respondents 1 to 3 liable. During the pendency of the proceeding claim petitioner died. Thereon, his

legal heirs were impleaded as additional petitioners. Compensation payable to the legal heirs was assessed at `9,053/-. The third respondent was directed to pay that amount. Appellants/legal heirs of the deceased petitioner are aggrieved by the quantum of compensation. M.A.C.A.No.1249 of 2012 2 3. It is argued that compensation awarded is low. On certain admissible heads compensation was not awarded. Learned counsel for the third respondent argued that no enhancement is needed.

4. Though the first respondent/driver of the offending vehicle expired, it is not necessary to implead his legal representatives since the owner of the vehicle is on record and there is no inter-se dispute between the respondents 2 and 3.

5. Paragraph 9 of the award states injuries suffered by the claim petitioner. It includes fracture of the third meta tarsal on the right side and fracture of pip joint of the 2nd toe. Claim petitioner also suffered certain other injuries and underwent inpatient treatment for three days, followed by OP treatment.

6. It is seen that the Tribunal has not awarded compensation for loss of earnings. Since the claim petitioner was a farmer by profession, his monthly income at the relevant time can be taken as `3,000/-. It is likely, having regard to the nature of injuries and the period of treatment that he was not able to work for three months and suffered loss. `9,000/- is awarded as loss of earnings.

7. Treatment expenses allowed by the Tribunal is only `203/-. It is possible that the claim petitioner was not able to M.A.C.A.No.1249 of 2012 3 produce all the medical bills. Hence a further sum of `1,000/- is allowed on that count.

8. For transportation charges what is awarded is only `250/-. The Tribunal failed to note that the claim petitioner may have had to attend the hospital several times and had to hire a vehicle for the purpose. Hence a further sum of `750/- is allowed on that count.

9. Compensation awarded for pain and suffering is `5,000/- which appears to be on the lower side. Having regard to the nature and site of injuries and the period of treatment, a further sum of `3,000/- is allowed on that count. Compensation

awarded for loss of amenities of life is only `3,000/- which, having regard to the circumstances above stated is increased by `2,000/-. Thus the additional compensation payable to the appellants comes to `15,750/-. That amount will carry interest @9% per annum for the period for which the Tribunal has awarded interest. Resultantly this appeal is allowed in part as under: (i) In modification of the award dated 08.02.2012 in O.P(M.V).No.745 of 2004 of the Motor Accident Claims Tribunal, Irinjalakkuda the appellants are allowed to recover a further sum of `15,750/-/- (Rupees Fifteen Thousand Seven Hundred and Fifty Only) with interest @9% per M.A.C.A.No.1249 of 2012 4 annum for the period for which the Tribunal has awarded interest, from the respondents 2 and 3. (ii) The third respondent is directed to deposit the amount in the Tribunal within two (2) months from this day. (iii) Direction regarding withdrawal/deposit of the amount shall be issued by the Tribunal. (iv) Parties are directed to suffer their cost in the appeal. All pending interlocutory applications will stand dismissed. Sd/- THOMAS P.JOSEPH, JUDGE Sbna True Copy P. A to Judge

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