

Vahid Vs. State of Kerala

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Court : Kerala

Decided On : Nov-06-2013

Judge : Honourable Mr.Justice Harun-Ul-Rashid

Appellant : Vahid

Respondent : State of Kerala

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 6TH DAY OF NOVEMBER 2013 15TH KARTHIKA, 1935 MACA.No. 2430 of 2010 ()
----- AGAINST THE AWARD IN OPMV10032007 of MACT PALA DATED 31-07-2010 APPELLANT/PETITIONER:

----- ANIL, S/O.BHARATAN, KALARIKKALKAROTTU HOUSE, CHERPUNKAL P.O., KIDANGOOR KOTTAYAM. BY ADVS.SRI.S.PRASANTH SRI.JAGADEESH LAKSHMAN
RESPONDENT(S)/RESPONDENTS: ----- 1. JOHNY THOMAS, NEW INDIA FUELS, I.O.C.DEALER, K.K.ROAD, PONKUNNAM-686506.

2. SAJI, S/O.THANKAPPAN, ERUPUKUZHIYIL HOUSE, KURISUMKAL BHAGAM, THIDANADU P.O. KOTTAYAM DISTRICT-686122.

3. MANAGER, NEW INDIA INSURANCE CO. LTD., KOTTAYAM-686001. R3 BY ADV. SRI.M.RAJAGOPALAN THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 06/11/2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: rmm S.SIRI JAGAN & K.RAMAKRISHNAN, JJ.

----- MACA No. 2430 of 2010
----- Dated this the 6th day of November, 2013

JUDGMENT

S.Siri Jagan,J The claimant in OP(MV) No.1003 of 2007 before the Motor Accidents Claims Tribunal, Pala, has come up in appeal, claiming enhanced compensation for the injuries and consequential disabilities suffered by him in an accident caused by the negligent driving of a vehicle owned and driven by respondents 1 and 2 and insured with the 3rd respondent. The Tribunal after finding negligence on the part of the driver of the vehicle, awarded compensation under various heads as follows:-
Sl Amount No Head of claim awarded
1 Loss of earnings (Total 12,500/-
2 Transportation Expense 2,000/-
3 Extra nourishment 1,000/-
4 Damage to clothing etc 500/-
5 Medical Expense 22,800/-
6 Bystander Expense 2,300/-
7 Pain and suffering 20,000/-
MACA No. 2430 of 2010
6 Sl Amount No Head of claim awarded
Loss/reduction in earning 1,67,400/-
8 capacity (a) Neuro disability 10,000/-
9 Loss of amenities 10,000/-
Total 2,48,500/-
Dissatisfied with the quantum of compensation awarded by the Tribunal, the appellant has filed this appeal.

2. The appellant submits that the compensation awarded under the various heads is on the lower side. The accident was on 15.5.2007. The appellant was at that time only 28 year old and he was a coolie by profession. He claimed his monthly income as .4500/-, but the Tribunal fixed only a notional income of 2500/- which is on the lower side is the first contention raised by the appellant. Secondly it is submitted that the appellant suffered very serious injuries including 3 fractures and was hospitalised for 46 days. The compensation of 20,000/- awarded by the tribunal for pain and suffering MACA No. 2430 of 2010 6 is not commensurate with the sufferings of the appellant. Thirdly it is contented that the Medical Collage

Hospital issued Exhibit A12 disability certificate assessing Orthopaedic disability of 31% and on a reference from the Tribunal, by Exhibit X1, the Government Medical College Hospital, Kottayam assessed neuro disability also of 13%, but the Tribunal, after calculating loss of earning capacity for the orthopaedic disability of 31%, simply added to 10,000/- for neuro disability without any calculation. According to the appellant the neuro disability should also have to be taken into account for calculating loss of earning capacity as done in the case of orthopaedic disability . It is the further contention of the appellant that for 46 days hospitalisation the bystander's expense at the rate of 50/- is on the lower side. Lastly, it is submitted that because of the disability, the appellant is suffering from bilateral anosmia, head ache and dizziness. off and on, loss of memory and he runs the risk of epilepsy and numbness on the forehead. Considering MACA No. 2430 of 2010 6 these disabilities, the compensation for loss of amenities awarded is on the lower side is his contention.

3. We have heard the learned counsel for the insurance company, who would support the impugned award.

4. We have considered the rival contentions in detail.

5. It is true that, apart from the oral evidence of the appellant himself, there is no other evidence to prove the avocation or income of the appellant. Still taking into account the fact that the accident was in 2007, we are inclined to increase the monthly income to . 3000/- from 2500/-. There cannot be a process of assessing loss of earning capacity taking into account the orthopaedic disability and neurological disability separately. What is relevant for the purpose is the whole body disability and the effect of such disability on his capacity to earn income. We are inclined to take the occupational disability as 31% and to calculate loss of MACA No. 2430 of 2010 6 earning capacity based on the income fixed by us. Accordingly as compensation for loss of earning capacity the appellant would get 1,89,720 ($3000 \times 12 \times 17 \times 31\%$) instead of 1,77,400/- awarded by the Tribunal .The difference would be . 12,320/-. Since the accident was in 2007, we are inclined to award bystanders expenses at the rate of Rs.150/- per day for 46 days which would come to .6900/- instead of .2300/-. Since the appellant suffered major

injuries including three fractures and he was hospitalised for 46 days, we are enhancing compensation for pain suffering to 30,000/- from 20,000/-. For loss of earnings, the appellant would get 2500/- more taking the income as .3000/- per month. Since the appellant suffered bilateral anosmia, head ache and dizziness off and on loss of memory and he runs risk of epilepsy and numbness on the forehead, the same would drastically affect his personal life to a great extent. He was 28 years old at the time of accident and he would have to live the rest of his life with this difficulty. In the MACA No. 2430 of 2010 6 above circumstances we are enhancing the compensation for loss of amenities to .50,000/- from .10,000/-. We are not inclined to enhance compensation under the other heads.

6. Adding together, the appellant would be entitled to additional compensation of .69,420/- over and above what has been awarded by the Tribunal. This amount would carry interest @ 9% per annum from the date of the claim petition till the date of payment. The insurance company is directed to deposit this amount also within 2 months. With the above modification of the impugned award, this appeal is disposed of. Sd/- S.Siri Jagan , Judge Sd/- K.Ramakrishnan, Judge rmm //True Copy// PA to Judge.

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