

Saji.M. Vs. Suran

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Court : Kerala

Decided On : Nov-27-2013

Judge : Honourable Mr.Justice S.Siri Jagan

Appellant : Saji.M.

Respondent : Suran

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 27TH DAY OF NOVEMBER 2013 6TH AGRAHAYANA, 1935 MACA.No. 945 of 2011 ()
----- AGAINST THE AWARD IN OPMV6462008 of MOTOR ACCIDENTS CLAIMS TRIBUNAL OTTAPPALAM, DATED 01-04-2011
APPELLANT(S)/PETITIONER: ----- SAJI M., AGED 26 YEARS, S/O.GOPALAN, KALLEDUMPIL HOUSE, AKALUR OTTAPALAM TALUK. BY ADVS.SMT.T.D.RAJALAKSHMI SRI.R.SREEHARI
RESPONDENT(S): ----- 1. SUREN, S/O.KESAVAN, VATTATHALA VEEDU, KECHERY, THRISSUR DISTRICT.

2. P.K.NANDAKUMAR, PALAKKAL HOUSE, AKALUR, OTTAPALAM TALUK.

3. THE NEW INDIA ASSURANCE COMPANY LIMITED, BRANCH OFFICE, J R J COMPLEX, OTTAPALAM-678121. R-3 BY ADV. SMT.P.K.SANTHAMMA THIS

MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 27.11.2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: S.Siri Jagan & K. Ramakrishnan, JJ
===== M.A.C.A.No.945 of 2011
===== Dated this, the 27th day of November, 2013.

JUDGMENT

K.Ramakrishnan, J.

Claimant in OP(MV) No.646 of 2008 on the files of the Motor Accidents Claims Tribunal, Ottapalam, is the appellant herein. The appellant filed the application for compensation for the injuries and consequential disabilities suffered by him in a motor vehicle accident caused on account of the rash and negligent driving of a vehicle driven by the first respondent, owned by the second respondent and insured with the third respondent. After considering the evidence on record, the Tribunal found that the accident occurred due to the negligent driving of the vehicle by first respondent and awarded a total compensation of Rs.92,260/- on various heads as follows; Loss of earning(Total) 9,000/- Medical and miscellaneous expenses 8,420/- Bystander expenses 1,000/- Transportation expenses 1,000/- Extra nourishment 5,00/- Damage to clothing etc. 5,00/- Pain and Suffering 15,000/- Loss of amenities and conveniences etc. 5,000/- Compensation for partial disability 51,840/- Total 92,260/- M.A.C.A.No.945 of 2011 :

2. : Dissatisfied with the quantum of compensation awarded, the appellant has filed this appeal before this court seeking enhancement.

2. Heard the counsel for the appellant and counsel for the Insurance Company.

3. Counsel for the appellant submitted that the appellant was an autorickshaw driver aged only 22 years and earning Rs.4,500/- per month. But the Tribunal has arbitrarily fixed his monthly income as Rs.3,000/- which is very low. Further, he suffered severe head injury and partial loss of left eye caused on account of the

injuries sustained and the Doctor who issued Ext.A10 disability certificate and examined as PW1 deposed that this will affect his earning capacity and he has certified 25% permanent disability on account of the same. But the Tribunal has taken only 8% for the purpose of assessing compensation under the head 'loss of earning capacity' which is very low. He was aged only 22 years and an un-married youngster. The disability has affected his marriage prospects. These aspects were not considered by the Tribunal while assessing compensation under the head 'loss of amenities and convenience' etc. and the amount of Rs.5,000/- M.A.C.A.No.945 of 2011 :

3. : awarded by the Tribunal is very low. The amount awarded under the other heads are also very low, considering the nature of injuries and disabilities suffered. According to the counsel for the appellant, the appellant is entitled to get enhancement on all heads.

4. On the other hand, the counsel for the Insurance Company submitted that there is no evidence adduced on the side of the appellant to prove either his avocation or his income. In the absence of such evidence, the Tribunal was perfectly justified in notionally fixing the income as Rs.3,000/- per month. Further, the evidence of PW1 is not sufficient to come to the conclusion that he will have 25% occupational disability in the absence of any evidence adduced on his side to prove that he is an autorickshaw driver by profession. So, the Tribunal was perfectly justified in adopting 8% disability for assessing compensation under the head 'loss of earning capacity'. The total compensation awarded is just and proper and no interference is called for at the hands of this court.

5. We have considered the rival contentions of both parties in detail.

6. The case of the appellant was that he was aged 22 M.A.C.A.No.945 of 2011 :

4. : years and an autorickshaw driver by profession and getting Rs.4,500/- per month. It is true that he did not go to the witness box and he did not produce any evidence to prove this fact as well. But, considering the fact that the accident occurred on 27.10.2007 and he was aged 22 years, one can presume that a person like the appellant will be getting at least Rs.3,500/- per month by doing

some work though not as an autorickshaw driver, if that avocation is not proved. So, we are inclined to re-fix the monthly income of the appellant as 3,500/-. If Rs. 3,500/- is taken as his monthly income, he will be entitled to get an amount of Rs.10,500/- instead of Rs.9,000/- awarded by the Tribunal under the head 'loss of earning during the period of treatment'. He suffered injuries of sutured wound on the scalp, black eye left, swelling of left cheek, contusion on right temporo parietal region, abrasion on right arm, left foot and CT brain shaved fracture left zygoma, left zygomatic arch. So, considering the nature of injuries sustained, he might have suffered severe pain. So, the amount of Rs.15,000/- awarded by the Tribunal under the head 'pain and suffering' appears to be on the lower side and we enhance the same to Rs.20,000/-. M.A.C.A.No.945 of 2011 :

5. :

7. The Doctor who issued Ext.A10 was examined as PW1 and he had deposed that the appellant is having permanent visual disability in night time and assessed 25% permanent disability on account of the same. He had also deposed that it may affect his earning capacity as he may have difficulty in doing work during night time on account of the visual disability. So, it may have considerable impact on his earning capacity as well. So, the Tribunal was not justified in fixing the occupational disability at 8% considering these aspects. So, we are inclined to enhance the same to 15%. If a recalculation is made, taking his monthly income as Rs.3,500/- and percentage of disability as 15%, he will be entitled to get an amount of Rs.1,13,400/- ($3500 \times 12 \times 18 \times 15\%$) instead of Rs.51,840/- awarded by the Tribunal under the head 'loss of earning capacity' and we award this amount under that head.

8. The appellant was aged only 22 years. He is an un- married youngster. The disability is likely to affect his marriage prospects as well. He will have to be with this difficulty for the remaining period of his life as well. Considering these aspects, the amount of Rs.5,000/- awarded M.A.C.A.No.945 of 2011 :

6. : by the Tribunal under the head 'loss of amenities in life and convenience' is on the lower side and we enhance the same to Rs.40,000/-. Though persuasive arguments were made by the counsel for the appellant to get enhancement on all

other heads, we feel that the amounts awarded under other heads are just and proper and the appellant is not entitled to get any enhancement on other heads.

9. In all, the appellant will be entitled to get an additional compensation of Rs.1,03,016/- over and above what has been awarded by the Tribunal, which the third respondent Insurance Company is liable to deposit with 9% interest from the date of petition till payment. Two months' time is granted to the Insurance Company to deposit this amount as well. With the above modification of the impugned award of the Tribunal, the appeal is disposed of. Sd/- S. Siri Jagan, Judge. Sd/- K.Ramakrishnan, Judge. Bb [True copy] P.A to Judge

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