

Gopakumar Vs. Sunil Jacob and Others

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Court : Kerala

Decided On : Nov-27-2013

Judge : Honourable Mr.Justice S.Siri Jagan

Appellant : Gopakumar

Respondent : Sunil Jacob and Others

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. 1372 of 2008 ----- AGAINST THE AWARD IN OP(MV)NO. 2004/2002 OF MOTOR ACCIDENTS CLAIMS TRIBUNAL, TRIVANDRUM DATED 15-12-2007 APPELLANT/APPLICANT: ----- GOPAKUMAR, S/O.GOVINDA PILLAI, AGED 37 CHARUVILA PUTHEN VEEDU, SANTHIVILA, NEMOM PO., THIRUVANANTHAPURAM. BY ADVS.SRI.R.T.PRADEEP SRI.J.ROBINSON SRI.V.VIJULAL RESPONDENT(S):RESPONDENTS: ----- * 1. SUNIL JACOB, SUNIL NIVAS, KARAMOODU, KALLAYAM, THIRUVANANTHAPURAM.(D E L E T E D). * 2. K.O.MATHEW, TC.26/2038, OOMMAN, STATUE, THIRUVANANTHAPURAM. (D E L E T E D).

3. THE MANAGER, UNITED INDIA INSURANCE CO.LTD., XAVIER BUILDING, 2ND FLOOR, PB.NO.50, PWD ROAD, NAGARCOIL. *
RESPONDENTS1AND2ARE DELETED FROM THE PARTY ARRAY AT THE RISK OF THE APPELLANT VIDE

ORDER

DTD. 21/11/2013 IN I.A.NO.3099/2013 IN MACA NO.1372/2008. R3 BY ADV. SRI.K.SANDESH RAJA THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 27.11-2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: Kss S.SIRI JAGAN & K.RAMAKRISHNAN, JJ.

===== M.A.C.A.No. 1372 of 2008 ===== Dated
this the 27th day of November, 2013

JUDGMENT

K.Ramakrishnan, J.: The claimant in O.P.(M.V).No.2004/2002 on the file of the Motor Accidents Claims Tribunal, Thiruvananthapuram, 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 the vehicle driven by the 2nd respondent-rider and insured with the 3rd respondent. The 1st respondent herein is the owner of the offending vehicle. (Respondents 1 and 2 were deleted from the party array as per order in I.A.No.3099/2013 dated 21.11.2013). After considering the evidence on record, the Tribunal found that the accident occurred due to the negligent driving of the vehicle by the rider of the vehicle and awarded a total compensation of ` 64,250/- on various heads as follows: m.a.c.a.1372/08 - :

2. :- Amount Head of claim awarded ` 1 Loss of earning 6,000.00 2 Medical and incidental expenses 600.00 3 Transportation to the hospital 500.00 4 Extra nourishment 500.00 5 Engaging a bystander 1,000.00 6 Damage to clothing 250.00 7 Pain and suffering 12,000.00 8 Permanent disability resulting in loss of future earning power 38,400.00 9 Loss of amenities 5,000.00 Total 64,250.00
Dissatisfied with the quantum of compensation awarded, the appellant has come before this Court with the above appeal seeking enhancement of compensation.

2. Heard both sides.

3. The case of the appellant was that the appellant was aged 32 years at the time of the accident and was a collie by profession getting ` 4,000/- per month. But, in the absence of any evidence, the Tribunal has notionally fixed his income as ` 2,000/-. Considering the fact that the accident occurred on 26.6.2002 and the appellant was aged 32 years at the time of the accident, we feel that he will be getting at least ` 2,500/- as monthly income and so, we are inclined to re-fix the monthly m.a.c.a.1372/08 - :

3. :- income of the appellant as ` 2,500/- per month. The Tribunal has taken three months' loss of earning and awarded ` 6,000/- at the rate of ` 2000/- per month. He had suffered comminuted fracture of both bones of right leg, Type III compound fracture of 1st metacarpal right and fracture of clavicle right. He was treated as inpatient for 17 days. Considering these facts, he could not be able to work for at least four months. So we are inclined to award ` 10,000/- under the head, 'loss of earning' instead of ` 6,000/- awarded by the Tribunal.

4. Considering the nature of injuries and period of treatment and the nature of treatment undergone, we feel that the amount of ` 12,000/- awarded by the Tribunal under the head, 'pain and suffering' is also on the lower side and we enhance the same to ` 20,000/- and award that amount under that head. He had produced Ext.A5 disability certificate issued by Dr.A.Sajid Hussain, Assistant Professor of Orthopaedics, Medical College Hospital, Thiruvananthapuram, certifying 19% permanent disability. Since he was not examined, the Tribunal has not accepted the entire disability assessed and taken only 10% disability for the purpose of assessing compensation under m.a.c.a.1372/08 - :

4. :- the head, 'loss of earning power'. Considering the nature of injuries sustained and nature of disability mentioned, we feel that 15% disability can be taken for the purpose of assessing compensation under the head, 'loss of earning capacity' instead of 10% taken by the Tribunal. If a re-calculation is made on the above inputs, the appellant will be entitled to get additional compensation of ` 72,000/- ( $2500 \times 12 \times 16 \times 15\%$ ) instead of ` 38,400/- awarded by the Tribunal under the head, 'loss of earning capacity' and we award that amount under that head.

5. Considering the nature of injuries and the disability suffered, it may have some impact of this disability in his personal life and he will have to live with this disability for the remaining period of his life as he was only 32 years at the time of the accident. So the amount of ` 5,000/- awarded by the Tribunal under the head, 'loss of amenities in life' appears to be on the lower side and we award ` 20,000/- under that head. We do not find any reason to interfere with the amounts awarded by the Tribunal under the other heads as we feel that the amounts awarded by the Tribunal under the other heads are just and proper. In all, the appellant will be entitled to get additional m.a.c.a.1372/08 - :

5. :- compensation of ` 60,600/- over and above what has been awarded by the Tribunal, which the 3rd respondent-insurance company is liable to pay with 9% interest per annum 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/- sdk+ K.RAMAKRISHNAN, JUDGE ///True copy/// P.A. to Judge

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