

Ramesh Babu Vs. Udayan

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Court : Kerala

Decided On : Jan-01-2014

Judge : Honourable Mr.Justice S.Siri Jagan

Appellant : Ramesh Babu

Respondent : Udayan

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 11TH DAY OF JANUARY 2014 11TH POUSHA, 1935 MACA.No. 1380 of 2009
----- O.P(M.V)NO:

394. 2003 OF THE MOTOR ACCIDENT CLAIMS TRIBUNAL, PARAVUR.
----- APPELLANT/PETITIONER: ----- RAMESH BABU, S/O GOPI, ELANGAPARAMBIL @ NAYARSSERY(H), MUNAMBAM, PALLIPPURAM. BY ADV. SRI.GOPAKUMAR G. (ALUVA)
RESPONDENTS/RESPONDENTS: ----- 1. UDAYAN, S/O CHANDRAN, MARATHU VEEDU, WEST JANAHITHA ROAD, MUNAMBAM, PALLIPPURAM VILLAGE.

2. ASHKAR E.A., S/O.ABDULKHADER, ERETHU HOUSE, Z-H NAGAR, MARKET P.O, MUVATTUPUZHA.

3. THE ORIENTAL INSURANCE CO. LTD., DIVISIONAL OFFICE, SHANN COMPLEX, 1ST FLOOR BAZAR ROAD, MATTANCHERRY, COCHIN-2. R3 BY ADVS. SRI.GEORGE CHERIAN (THIRUVALLA) SMT.K.S.SANTHI THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 01-01-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: Msd. S.SIRI JAGAN & K. RAMAKRISHNAN, JJ.

..... M.A.C.A.NO.1380
OF2009..... Dated this the 1st day of
January, 2014.

JUDGMENT

Siri Jagan, J.

The claimant in OP(MV)No.394/2003 before the Motor Accidents Claims Tribunal, Paravur, is the appellant herein. He suffered injuries in an accident, which happened on 24.2.1997, caused by the negligent driving of a vehicle owned and driven by respondents 1 and 2 and insured with the third respondent. He was 26 years old at the time of the accident and he claims to be an auto rickshaw driver earning an income of Rs.6,000/- per month. The Tribunal, after finding negligence on the part of the driver of the vehicle, awarded compensation under various heads as follows: Pain and sufferings Rs. 20,000 Loss of earnings Rs. 12,000 Treatment expenses Rs. 98,000 Transport to hospital Rs. 3,000 Loss of earning power Rs. 86,400 Loss of amenities in life Rs. 12,000 ----- total Rs.2,31,400 ===== M.A.C.A.NO.1380 OF20092 2.Dissatisfied with the quantum of compensation awarded by the Tribunal, the appellant has filed this appeal seeking enhanced compensation.

3. The first contention raised by the appellant is that the income fixed for the appellant is on the lower side. To prove his avocation, he had produced his driving license and badge, which would prove that he was actually an auto rickshaw driver. Therefore, the notional income of Rs.2,000/- fixed by the Tribunal is on the lower side, is the contention raised. The second contention is that, despite accepting the fact that the appellant was in-patient for 99 days, the Tribunal did not

award any amount for bystander's expenses. The third contention is that although the Tribunal accepted the fact that the appellant suffered 20% permanent disability, only Rs.12,000/- was awarded for loss of amenities in life, which is on the lower side. It is also contended that the Tribunal has not awarded any compensation for extra nourishment.

4. We have heard the counsel for the insurance company as well, who would argue in support of the award. M.A.C.A.NO.1380 OF20093 5. Although his driving licence and badge were produced in evidence, the appellant did not adduce any evidence regarding his income. Therefore, the Tribunal could have only fixed notional income. In 1997, the notional income of Rs.2,000/- cannot be said to be on the lower side, since in the second schedule to the Motor Vehicles Act, incorporated in 1994, the legislature had fixed the notional income of a non-earning member as Rs.15,000/- per year. Therefore, we are not inclined to interfere with the notional monthly income fixed for the appellant by the Tribunal. But we find merit in the contention of the appellant that the Tribunal ought to have awarded expenses for a bystander, since the appellant was hospitalized for 99 days. Therefore, we are inclined to award compensation under this head. For 99 days, at the rate of Rs.100/- per day, we award Rs.9,900/- for bystander's expenses. Tribunal had accepted 20% permanent disability and awarded compensation of Rs.86,400/- for loss of earning power. 20% disability would very seriously affect the personal life of the appellant to a very great extent. Therefore, we are inclined to enhance the compensation for loss of amenities in life to Rs.30,000/- from Rs.12,000/-. The difference would be M.A.C.A.NO.1380 OF20094 Rs.18,000/-. As rightly pointed out by the counsel for the appellant, the Tribunal did not award any amount for extra nourishment. We fix Rs.2,100/- under that head.

6. Despite the persuasive arguments of the learned counsel for the appellant, we are not inclined to enhance compensation under the other heads, since we are of the opinion that the Tribunal has awarded just and reasonable compensation under other heads. Adding together, the appellant will be entitled to an additional compensation of Rs.30,000/- over and above what has been awarded by the Tribunal. That amount would carry interest at the rate of 9% per annum from the

date of petition till date of payment. The third respondent insurance company is directed to deposit this amount as well within two months. With the above modification of the impugned award of the Tribunal, the appeal is disposed of. S.SIRI JAGAN, JUDGE. K. RAMAKRISHNAN, JUDGE. cl M.A.C.A.NO.1380 OF20095

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