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Joji Augustine Vs. Shaju Thomas

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Court : Kerala

Decided On : Jan-02-2014

Judge : Honourable Mr.Justice S.Siri Jagan

Appellant : Joji Augustine

Respondent : Shaju Thomas

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE S.SIRI JAGAN & THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH THURSDAY, THE2D DAY OF JANUARY201412TH POUSHA, 1935 MACA.No. 107 of 2005 ( ) ---------- AGAINST THE AWARD IN OPMV14752000 of MACT, IRINJALAKUDA DATED2806-2004 APPELLANT(S)/PETITIONER IN OP(MV): ---------- JOJO AUGUSTINE, S/O.AUGUSTINE, VALANCHERY HOUSE, KALADY P.O., ALUVA TALUK. BY ADVS.SRI.P.V.BABY SRI.A.N.SANTHOSH RESPONDENTS/RESPONDENT(S)1 & 2 IN OP(MV): ---------- * 1. SHAJU THOMAS, ANTHANIKKAL HOUSE, PARAVATTANI, THRISSUR. (DELETED) RESPONDENT NO.1 IS DELETED FROM THE PARTY ARRAY AT THE RISK OF THE APPELLANT AS PER

ORDER
DATED1112/13 IN IA NO.3349/13 IN MACA No.107/05.

2. MANAGER, NATIONAL INSURANCE CO.LTD., THRISSUR. R,R2 BY ADV. SMT.SARAH SALVY THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON0201-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: S.SIRI JAGAN & BABU MATHEW P JOSEPH, JJ.

---------- MACA.No. 107 of 2005 ---------- Dated this the 2nd day of January, 2014

JUDGMENT

S.Siri Jagan,J.

The claimant in OP(MV) No.1475/2000 before the Motor Accident Claims Tribunal, Irinjalakuda, is the appellant herein. He suffered injuries in an accident caused by the negligent driving of a vehicle insured with the 2nd respondent (1st respondent was deleted from the party array at the risk of the appellant, as per order dated 11-12-2013 in IA No.3349/2013). The Tribunal, after finding negligence on the part of the driver of the vehicle, awarded compensation under various heads as follows:- Loss of earnings 3000/- Transport to hospital 300 Extra nourishment 1100/- Medical expenses 29,945 Pain and suffering 10,000/- Loss of earning capacity 30,600/- Loss of amenities in life 3,000/- Total 77,945/- MACA.No. 107 of 2005 :

2. : Dissatisfied with the quantum of compensation awarded by the Tribunal, the appellant has filed this appeal seeking enhanced compensation.

2. The first contention raised by the appellant is regarding his monthly income. He claimed to be a cleaner in a private bus earning 3000/- per month. But the Tribunal fixed only a notional income of 1500/-, which is on the lower side is the contention raised by the appellant. The appellant points out that the appellant has produced Ext.A13 certificate from his employer to prove his income. Therefore the Tribunal went wrong in limiting the monthly income to 1500/-, is the contention raised. It is further submitted that the amounts of compensation for pain and suffering and loss of amenities in life are also on the lower side.

3. We have heard the counsel for the insurance company also, who would argue to sustain the award.

4. We have considered the rival contentions in detail.

5. It is true that the appellant did not prove the certificate issued by the employer by examining his employer. As such, there is nothing wrong in the Tribunal refusing to rely on Ext.A21 MACA.No. 107 of 2005 :

3. : certificate to prove the income of the appellant. But, even then, since the accident was on 30.7.2000, we are of opinion that the notional income of 1500/- is on the lower side. We fix it as 2000/- per annum. Consequently for 2 months' loss of earnings, the compensation would be 4000/- instead of 3000/-.

6. The appellant was aged 26 years at the time of the accident. The Tribunal had accepted 10% permanent disability for the appellant on account of the injuries sustained by him in the accident. If the compensation for loss of earning power is recalculated on the basis of above inputs, the appellant would be entitled to 40,800/- (2000x12x17x10%) under that head, instead of 30,600/-. The difference would be 10,200/-. The appellant suffered head injury. He had undergone emergency craniotomy evcuation. He must have been in severe pain for quite some time. Therefore we enhance the compensation for pain and suffering to 20,000/- from 10,000/-. The difference would be 10,000/. For 10% disability, the appellant is entitled to 15,000/- for loss of amenities in life, since the disability suffered by him would seriously affect his personal life to a great extent. We award MACA.No. 107 of 2005 :

4. : that compensation under that head, instead of 3000/- awarded by the Tribunal. The difference would be 12,000/-.

7. Adding together, the appellant would entitled to get additional compensation of 33,200/- over and above what has been awarded by the Tribunal. This amount would carry interest at the rate of 9% per annum from the date of claim petition till date of payment. The 2nd respondent insurance company is directed to deposit this amount also within two months. With the above modification of the impugned award of the Tribunal, the appeal is disposed of. Sd/- S.SIRI JAGAN , JUDGE Sd/- BABU MATHEW P JOSEPH, JUDGE //TRUE COPY// PA TO JUDGE rmm

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