

Khadeeja Vs. Anvar.K.K.

Khadeeja Vs. Anvar.K.K.

SooperKanoon Citation : sooperkanoon.com/1143717

Court : Kerala

Decided On : Jun-06-2014

Judge : Honourable Mr. Justice B.Kemal Pasha

Appellant : Khadeeja

Respondent : Anvar.K.K.

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE B.KEMAL PASHA FRIDAY, THE 6TH DAY OF JUNE 2014 16TH JYAISHTA, 1936 MACA.No. 629 of 2013 () ----- AGAINST THE AWARD IN OPMV3232011 of MOTOR ACCIDENT CLAIMS TRIBUNAL , KALPETTA DATED 07-12-2012 APPELLANT(S)/PETITIONER: ----- KHADEEJA , AGED 55 YEARS W/O.ALI , KALAPPARA HOUSE, THALAPPUZHA POST 8H NUMBER MANANTHAVADY TALUK, WAYANADU BY ADV. SRI.ABRAHAM MATHEW (VETTOOR) RESPONDENT(S)/RESPONDENTS: ----- 1. ANVAR.K.K., AGED 21 YEARS S/O.ASSANAR K.P, KOZHITHANPARAMBIL HOUSE PUTHENPURA COLONY, KANIYARAM POST, MANANTHAVADY TALUK (DRIVER CUM OWNER OF THE AUTORICKSHAW NO KL12F-655) NO126129/2010) PIN67064 2. SURENDRAN V S/O.VELAYUDHAN, 1/961 SUGANDHAGIRI UNIT 5 SUGANDHAGIRI POST, VYTHIRI TALUK (DRIVER CUM OWNER OF THE MOTOR CYCLE NO KL12F-1642) PIN673576 3. NATIONAL INSURANCE COMPANY LTD KALPETTA (BOTH VEHICLES INSURED) POLICY

COVER NOTE NUMBER OF AUTORICKSHAW57100326930 POLICY
CERTIFICATE NUMBER OF MOTOR CYCLE3510031106202497553 PIN673321
R3 BY ADV. SRI.K.B.RAMANAND STANDING COUNSEL BY SRI.M.A.GEORGE
THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON0606-2014, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING: B.KEMAL PASHA, J.

..... M.A.C.A. No. 629 of 2013
..... Dated this the 6th day of June, 2014

JUDGMENT

Dissatisfied with award dated 07.12.2012 passed by the Motor Accident Claims Tribunal, Wayanad in O.P.(MV) No.323/2011, the petitioner has come up in appeal.

2. The appellant, a coolie worker aged 55, suffered a motor vehicle accident on 11.04.2011, while she was travelling by an auto rickshaw ridden by the 1st respondent, collided with a motorbike bearing Reg.No.KL-12F-1642 ridden by the 2nd respondent. The accident had occurred solely due to the rashness and negligence on the part of the driver of the auto rickshaw and the rider of the motorbike. According to the appellant, both the vehicles were covered by valid insurance polices issued by the 3rd respondent.

3. In the accident, the appellant sustained M.A.C.A. 629 of 2013 :-

2. :- (1) Lacerated wound right foot (2) Fracture left wrist (3) Abrasion right shoulder(4) Contusion right forehead and (5) Fracture metatarsal right foot, as is evident from Ext.A5 wound certificate issued from the District Hospital, Mananthavady. She had to undergo treatment as inpatient for nine days. She was issued with a disability certificate by the District Medical Board, Wayanad in which her permanent disability was assessed at 3%, as per the Mc-Bride's scale. The said Ext.C1 certificate further reveals that on assessment as per National Institute of Orthopedically Handicapped Scale(N.I.O.H) the disability was 15%. As the assessment under N.I.O.H. is confined to functional disability, and the permanent

disability assessed as per Mc-Bride's scale is a whole body disability, the Tribunal has accepted the permanent disability at 3%. The Tribunal has passed the impugned award granting a total compensation of 41,020/- with interest at the rate of 7.5% per annum from the date of petition till the date of payment.

4. Heard the learned counsel for the appellant and M.A.C.A. 629 of 2013 :-

3. :- the learned Standing Counsel for the 3rd respondent. Even though the learned counsel for the appellant has canvassed an argument that the Tribunal ought to have considered the disability at 15% as assessed through N.I.O.H. scale, the said argument is of no merit at all. When the whole body disability has to be considered as permanent disability, the assessment made through the Mc-Bride's scale has to be adopted. The said disability has been assessed at 3%. Considering the nature of injuries, it cannot even be imagined that the said permanent disability will be more than 3%. The learned counsel for the appellant has pointed out that the appellant is a coolie worker who was having a monthly income of 4,000/-. Considering the submissions made by the learned counsel for the appellant, this Court of the view that her monthly income can be considered as 3,500/-. Therefore, the loss of earnings granted for three months has to be enhanced by an amount of 1,500/-. For pain and sufferings, an amount of 12,000/- only has been granted by the Tribunal. The same has to be enhanced to M.A.C.A. 629 of 2013 :-

4. :- 15,000/-. Therefore, an additional amount of 3,000/- has also to be granted under that head. For compensation for permanent disability an amount of 11,340/- has to be granted instead of 9,720/-. For loss of amenities an amount of 5,000/- only was granted and the same has to be enhanced to 7,500/-. Therefore, this Court is of the view that an amount of 5,620/- more has to be granted as enhanced compensation to the appellant. In the result, the M.A.C.A. is allowed in apart and amount of 5,620/- more is allowed as enhanced compensation to the appellant with interest at 7.5% per annum from the date of petition till the date of payment. The said amount shall be paid by the 3rd respondent within a period of three months from today. Sd/- B. KEMAL PASHA, JUDGE ul/- [True copy] P.S. to Judge