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Ajeesh Vs. Prathapan

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Court : Kerala

Decided On : Aug-28-2014

Judge : Honourable Mr. Justice a.K.Jayasankaran Nambiar

Appellant : Ajeesh

Respondent : Prathapan

Judgement :

IN THE HIGH COURT OF KERALAAT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE B.KEMAL PASHA THURSDAY,THE28H DAY OF AUGUST20146TH BHADRA, 1936 MACA.No. 517 of 2014 () ---------- AGAINST THE AWARD IN OP(MV) 1473/2005 of M.A.C.T., NEYYATTINKARA DATED2309-2013 APPELLANT/APPLICANT : ---------- AJEESH S/O. SASI, KADAKKATTUVILA PUTHEN VEEDU, VALIAVILAPURAM OTTASEKHARAMANGALAM P.O., KEEZHAROOR, KATTAKADA THIRUVANANTHAPURAM. BY ADV. SRI.R.GOPAN RESPONDENTS/RESPONDENTS : ---------- 1. PRATHAPAN S/O. THANKAPPAN, 5/570, AYYAMCODE NEYYATTINKARA THIRUVANANTHAPURAM-695 121. (OWNER CUM DRIVER OF THE VEHICLE BEARING REG.NO.KL-01/AA3315.

2. THE MANAGER NEW INDIAASSURANCE CO. LTD., 2ND FLOOR SWADESABHIMANI COMPLEX, NEAR KSRTC BUS STAND NEYYATTINKARA THIRUVANANTHAPURAM-695 121. (IMPLEADED AS PER

ORDER
ON IA NO.385/2007 DTD.3.4.2007). R2 BY ADV. SMT.P.K.SANTHAMMA R BY SRI.A.A.ZIYAD RAHMAN THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON2808-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: B. KEMAL PASHA, J.

`` M.A.C.A. No.517 of 2014 E `` Dated this the 28th day of August, 2014

JUDGMENT

~ ~ ~ ~ ~ ~ ~ ~ ~ ~ Aggrieved by award dated 23.09.2013 of the Motor Accidents Claims Tribunal, Neyyattinkara in O.P.(MV) No.1473/2005, the petitioner has come up in appeal.

2. A strange situation in which a claim petition was unnecessarily thrown to the dust bin by the Tribunal has been brought to the notice of this Court, through this appeal. It seems that the Tribunal has committed gross illegality and irregularity in dismissing O.P.(MV) No.1473/2005. It is a case wherein the appellant, a 22 year old young man, had suffered a motor accident on 26.04.2005, whereby he sustained Type I compound medial malleolus fracture. He had to undergo treatment as inpatient at Medical College Hospital, Thiruvananthapuram for 12 days and had undergone surgery. He had approached the Tribunal for M.A.C.A.517/2014 :

2. : compensation through the O.P.(MV). In the O.P.(MV), even though notice has been served on the first respondent, registered owner of the vehicle, he remained ex parte. It has been brought to the notice of this Court that the additional 3rd respondent, who is the insurer, has not chosen to file any written statement. The appellant had produced the certified copy of the First Information Report in crime No.355/2005 in respect of the incident, the certified copy of the scene mahazar in the case and other records involving his discharge card, medical bills and the copy of the insurance certificate in respect of the vehicle.
``

3. It seems that the appellant had filed a proof affidavit in lieu of his chief examination before the Tribunal and he was present for the examination before the Tribunal. The Tribunal stated that as the affidavit has been sworn in and as there was nobody to cross examine him, he need not be examined further. The documents produced by the appellant were marked as Exts.A1 to A5. Even when the M.A.C.A.517/2014 :

3. : respondents have not chosen to contest the matter, it seems that the Tribunal, as a short cut for disposing of the said O.P. (MV), has chosen to dismiss the O.P.(MV) without any basis. It seems that the cries for justice by the appellant had fell in deaf and cruel ears and his claim was unnecessarily thrown to the dust bin. The dismissal of the O.P.(MV) has resulted in substantial miscarriage of justice. As the impugned award suffers from gross illegality and error, the impugned award is liable to be set aside and the O.P.(MV) is only to be restored, and I do so.

4. In this case, the Tribunal shall not wait for any further evidence for proving the accident, as the accident stands proved. Apart from that, the accident is not disputed or challenged by any of the respondents. The Tribunal shall consider that the accident as well as the negligence from the part of the first respondent stand proved. The matter has to go back to the Tribunal solely because of the fact that the Tribunal has not cared to calculate the compensation M.A.C.A.517/2014 :

4. : payable to the appellant. In the result, this appeal is allowed and the impugned award is set aside. The matter is remitted to the Tribunal for properly calculating the compensation to which the appellant is entitled to. The Tribunal is cautioned to keep its eyes and ears open to consider the cries of those unfortunates who sustain road traffic accidents. The Tribunal shall pass the award in this case within 15 days from the date of receipt of the copy of this judgment. Still, the appellant is the only contesting party in the matter. The appellant shall appear before the Tribunal on 23.09.2014. Sd/- (B.KEMAL PASHA, JUDGE) aks/29/08 // True Copy // PA to Judge

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