

Vijayan Vs. Nazar

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Court : Kerala

Decided On : Oct-08-2014

Judge : Honourable Mr. Justice K.Abraham Mathew

Appellant : Vijayan

Respondent : Nazar

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW WEDNESDAY, THE 8TH DAY OF OCTOBER 2014 16TH ASWINA, 1936 MACA.No. 2316 of 2013 (D) ----- AGAINST THE AWARD IN OP(MV) NO. 411/2010 OF MACT., MUVATTUPUZHA DATED 06-06-2013.

APPELLANT(S)/APPELLANT/PETITIONER:

----- VIJAYAN, AGED 46 YEARS, S/O.PONNAPPAN ACHARY, POLAKKATTUPARAMBIL HOUSE, THRIKKARIYOOR P.O, KOTHAMANGALAM, ERNAKULAM DISTRICT. BY ADVS.SRI.SOORAJ T.ELENJICKAL SRI.K.NIRMALAN

RESPONDENT(S)/RESPONDENTS/RESPONDENTS:

----- 1. NAZAR, S/O.SAIDHU MUHAMMAD, KAVISSERYKUDY HOUSE, AIROORPADAM P.O, KOTHAMANGALAM 686692.

2. HAIDAR, S/O.UMMAR, AKKALAMATTOM HOUSE, NELLIKUZH P.O., KOTHAMANGALAM - 686 691.

3. THE ORINETAL INSURANCE COMPANY LTD., KOTHAMANGALAM 686691. R3 BY ADV. SRI GEORGE CHERIAN (THIRUVALLA) , (B/O) R BY SRI. GEORGE CHERIAN (THIRUVALLA) THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 08-10-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: P.T.O. St/- K. ABRAHAM MATHEW, J.

----- M.A.C.A No.2316
OF 2013----- Dated this the 8th day of October,
2014

JUDGMENT

The appellant sustained injuries in a motor accident. The vehicle had been insured with the 3rd Respondent. He claimed Rs.1,00,000/- as compensation. The Tribunal awarded Rs.64,300/-. As there was violation of the conditions of the policy, the 3rd Respondent was allowed to recover the amount from the 2nd Respondent owner of the vehicle after making the payment to the appellant. The appellant is not satisfied with the amount awarded to him. Hence, this appeal.

2. Heard.

3. The only question that arises for consideration is whether the appellant is entitled to get a higher amount of compensation.

4. It is seen from Exts.A7 and A8 certificates that the appellant sustained injuries on the right big toe. It was amputated at Tpx level. He was treated as inpatient for six days.

5. The Tribunal awarded Rs.10,000/- under the head 'pain and sufferings' and Rs.7,000/- under the head 'loss of amenities'. Rs.1,000/- was awarded under the head 'extra nourishment', Rs.1,000/- under the head 'transportation charges' and Rs.18,054/- under the head 'medical expenses'. It appears that these amounts are reasonable. M.A.C.A No.2316 OF 2013 6. The incident happened in the year 2009. The appellant was aged 43 years at the relevant time. He was a goldsmith

by occupation. In the absence of any reliable evidence to prove his occupation, the Tribunal fixed it as Rs.3,500/- p.m. Having regard to the age of the appellant and the year in which the accident took place, I think the monthly income can be fixed at Rs.4,000/-.

7. Towards the loss of earnings, the appellant was given two months income. It appears that he could not have worked for three months. So, the loss of earnings is Rs.12,000/- . He is entitled to get Rs.4,500/- in addition to the amount of Rs.7,500/- awarded by the Tribunal.

8. Though the appellant did not produce any evidence to prove the percentage of permanent disability, the Tribunal fixed it at 3%. As mentioned earlier, his right big toe was amputated at Ptx level. The Tribunal fixed the permanent disability at 3%, which appears to be just. But, since the income has been fixed at Rs.4,000/- p.m., the appellant is entitled to get enhanced amount under the head permanent disability. The amount is $4000 \times 12 \times 15 \times 3 \div 100 = \text{Rs.}21,600/-$. The enhancement is $\text{Rs.}21,600 - 18,900 = \text{Rs.}2,700/-$.

9. Thus, the appellant is entitled to get Rs.7,200/-. M.A.C.A No.2316 OF20133 In the result, this appeal is allowed in part, and the appellant is allowed to recover Rs.7,200/- (Rupees seven thousand and two hundred only) in addition to the amount awarded by the Tribunal. Sd/- K. ABRAHAM MATHEW, JUDGE. //true copy// P.S. to Judge St/-

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