

Viju vs Akbar

Viju vs Akbar

SooperKanoon Citation : sooperkanoon.com/1352966

Court : Kerala

Decided On : Dec-22-2023

Judge : Honourable Mr.Justice Ziyad Rahman a.a.

Appeal No. : MACA/1403/2012

Appellant : VIJU

Respondent : AKBAR

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A. ND
FRIDAY, THE 22 DAY OF DECEMBER 2023 / 1ST POUSHA, 1945
MACA NO. 1403 OF 2012 AGAINST THE AWARD DATED 28.10.2010
IN OPMV 1411/2007 OF MOTOR ACCIDENT CLAIMS TRIBUNAL,
ERNAKULAM APPELLANT/PETITIONER:

VIJU AGED 23 YEARS S/O.RAMACHANDRAN,THUDIPARAMBIL
HOUSE,10/119,SJD LANE,AMARAVATHY,COCHIN-1. [DIED] ** LRS
OF DECEASED APPEALLNT ARE IMPLEADED 2 RENJINI.C.S AGED
29 YEARS, W/O. LATE VIJU, CHENGADI PARAMBIL, EROOR WEST.
P.O, THRI PUNITHURA, ERNAKULAM - 682306. 3 DEVANANDANA ,

AGED 5 YEARS, D/O. LATE VIJU, REPRESENTED BY HER MOTHER RENJINI. C.S, AGED 29 YEARS, W/O. LATE VIJU, CHENGADI PARAMBIL, EROOR WEST. P.O., THIRUPUNITHURA, ERNAKULAM - 682306. 4 CHANDRIKA AGED 57 YEARS, W/O. RAMACHANDRAN, HOUSE NO.3/391, KARIMATHU ROAD, KANDANADU [PALLITHODU], ERNAKULAM - 682305. [THE LEGAL HEIRS OF THE DECEASED APPELLANT ARE IMPEADED AS ADDITIONAL APPELLANTS 2 TO 4 AS PER ORDER DATED 7/11/2023 IN IA 1/2023 IN MACA BY ADVS. R.SUDHISH M.MANJU K.R.RANJITH

RESPONDENTS/RESPONDENTS: 1 AKBAR S/O.UMMER,13/292(6/2014),KOCHANGADI COCHIN-682002. 2 TONY S/O.JOSEPH,KUNNAPPALLY VEETIL,NEAR EAST JETTY,PANAMBUKKAD,MULAVUKKAD.P.O,ERNAKULAM-682504. 3 NATIONAL INSURANCE COMPANY LIMITED KOCHI BRANCH,SHALIMAR CHAMBERS,P.T.JACOB ROAD,THOPPUMPADY,COCHIN-682005. BY ADV SRI.A.A.MOHAMMED NAZIR THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 22.12.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

This Claim Petition is arising from O.P(M.V) No.1411/2007 on the files of the Motor Accidents Claims Tribunal, Ernakulam. The said Claim Petition was submitted by one Viju seeking compensation for the injuries sustained in a motor accident that occurred on 04.12.2005. The accident occurred, when a vehicle bearing Registration No.KL 07 AQ 4390 hit the said Viju due to the rash and negligent driving of the 2 nd respondent. The said vehicle was owned by the 1 st respondent and was insured with the 3rd respondent. The Claim Petition was submitted in such circumstances seeking a compensation of Rs.1.5 lakhs. The said Viju was a student aged 16 years at the time of accident.

2. The insurer, the 3rd respondent in the Claim Petition, contested the matter by filing a written statement. However, they admitted the coverage of the policy, but

they disputed the negligence as well as the quantum of compensation.

3. The evidence in this case consist of Exts. A1 to A6 from

the side of the claimant and no evidence was adduced by the respondents. After the trial, the Tribunal found that the accident occurred due to rash and negligent driving of the 2 nd respondent and being the insurer, the 3 rd respondent was held liable to pay the compensation. The quantum of compensation was fixed as Rs.30,745/- and the said amount was directed to be deposited by the 3rd respondent with interest at the rate of 8% per annum from the date of petition till realisation. This appeal was originally submitted by the claimant seeking enhancement of compensation. During the pendency of the appeal, the original claimant died and the additional appellants 2 to 4 were impleaded being the legal heirs of the deceased.

4. Heard Smt.M.Manju, learned counsel appearing for the appellant and Sri.A.A.Muhammed Nazir, learned Standing Counsel appearing for the 3rd respondent, Insurance Company.

5. The only dispute in this case relates to the quantum of

compensation. The learned counsel contends that the amounts awarded by the Tribunal on various grounds were on the lower side whereas, the same is opposed by the learned counsel appearing for the 3rd respondent, Insurance Company.

6. However, after perusal of the materials placed before this court, I find force in the contentions put forward by the

learned counsel for the appellant. Of course, it is true that no disability was reportedly sustained by the original claimant. However, the claimant had suffered injuries such as a small contusion on the right parietal region, abrasion on the right elbow and right hip and haematoma on the right fronto temporal region. The amounts awarded by the Tribunal towards pain and suffering and loss of amenities were only Rs.8,000/- and Rs.6,000/- respectively, which appear to be very low.

7. Considering the nature of injuries and the difficulties

that might have arose from the same, certainly higher amounts ought to have been granted by the Tribunal. In the facts and circumstances of the case, I deem it appropriate to refix the compensation under the said heads as Rs.25,000/- and Rs.20,000/- respectively. Consequently, the additional amount payable would come to Rs.17,000/- and Rs.14,000/- respectively. When moving on to the other heads, it can be seen that, the amount awarded towards loss of studies was only Rs.2,000/-, which appears to be on lower side. Considering the nature of the injuries, certainly, the claimant must have been prevented from pursuing the studies, at least for a period of more than one month. In such circumstances, I deem it appropriate to grant a further sum of Rs.5,000/- under

the said head. As the total compensation receivable by the appellant comes to Rs.36,000/- (17,000 + 14,000 + 5,000).

8. In the light of the aforesaid observations and findings, this appeal is allowed. The award dated 28.10.2010 passed by the

Motor Accidents Claims Tribunal, Ernakulam in O.P(M.V) No.1411/2007 is modified by granting an additional compensation of Rs.36,000/- and the said amount shall be deposited by the 3 rd respondent Insurance Company along with interest at the rate as ordered by the Tribunal within a period of three months from the date of receipt of a copy of this judgment. However, it is clarified

that as the appeal was filed with the petition to condone the delay of 387 days, the 3rd respondent shall be entitled to exclude the said period by computing the interest on the additional compensation. Sd/- ZIYAD RAHMAN A.A., JUDGE Isn
RESPONDENTS EXHIBITS: NIL TRUE COPY P.A TO JUDGE LSN

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com