Sudhakaran vs Sugesh

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Court : Kerala

Decided On : Nov-30-2023

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

Appeal No. : MACA/1153/2013

Appellant : Sudhakaran

Respondent : Sugesh

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A. THURSDAY, THE 30TH DAY OF NOVEMBER 2023 / 9TH AGRAHAYANA, 1945 MACA NO. 1153 OF 2013 AGAINST THE ORDER/JUDGMENT OPMV 2438/2005 OF MOTOR ACCIDENT CLAIMS TRIBUNAL & SPECIAL COURT FOR E.C. ACT CASES, THRISSUR APPELLANT/PETITIONER: SUDHAKARAN S/O. NARAYANA PILLAI, RESIDING AT GEETHANJALI HOUSE, P.O.VENNUR, PAZHAYANNUR (VIA), THRISSUR DISTRICT. BY ADVS. SRI.T.C.SURESH MENON SRI.A.R.NIMOD RESPONDENT/RESPONDENTS:

1 SUGESH RESIDING AT KARIPPATHI HOUSE, P.O.KANIMANGALAM, THRISSUR-680 027. 2 RAJESH S/O. RAGHAVAN, RESIDING AT NAITHUKULANGARA HOUSE, KATTUNCHIRA, VEGANELLUR (VIA), THRISSUR-680 586. 3 THE ORIENTAL INSURANCE COMPANY LIMITED M.G.ROAD, THRISSUR-680 001. BY ADVS. SMT.R.RAJITHA Dinesh Mathew J Murikan SRI.M.JACOB MURICKAN SRI.SANTHOSH P.PODUVAL SMT.VINAYA V.NAIR

OTHER PRESENT: R1 -SRI.SANTHOSH P.PODUVAL, R3 - Dinesh Mathew J Murikan THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 30.11.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The appellant was the petitioner in O.P.(MV).No.2438 of 2005 on the file of the Motor Accidents Claims Tribunal, Thrissur. The said claim petition was submitted by him seeking compensation for the injuries sustained to him in a motor accident occurred on 11.08.2005. The accident occurred when the motorcycle ridden by him was hit by an autorickshaw driven by the 2 nd respondent. The said auto rickshaw was owned by the 1 st respondent and was insured with the 3rd respondent herein. The appellant at the relevant time was aged 52 years and was working as the Head Master in a Government Upper Primary School. The monthly income claimed was Rs.14,035/- and according to him he sustained physical disability. Claim petition was submitted in such circumstances.

2. The 3rd respondent/Insurance Company filed a written

statement admitting the coverage of policy for the autorickshaw but they disputed the liability on various grounds. The negligence as well as the quantum of compensation were also disputed by them. They further contended that the 2 nd respondent was not having a valid driving license to drive the autorickshaw. The said claim petition was tried along with O.P.(MV).No.2444/2005.

3. The evidence in this case consists of Exts.A1 to A15 from the side of the claimants, and no evidence was adduced by the respondents. After the trial, the Tribunal came to the

conclusion that the accident occurred due to the negligence of the

driver of the autorickshaw and being the insurer, the 3 rd respondent was held liable to pay the compensation. The quantum

of compensation was fixed at Rs.1,13,310/- and the 3 rd respondent was directed to deposit the said amount along with interest at the rate of 8% per annum from the date of petition till realization. It was also found by the Tribunal that, the 2 nd respondent was driving the auto rickshaw without a valid driving licence and therefore, the 3rd respondent/ Insurance Company was permitted to recover the compensation from the 1 st respondent, the registered owner of the said vehicle. This appeal is filed by the appellant seeking enhancement of compensation.

4. Heard Sri.Nimod.A.R, the learned counsel appearing for

the appellant, Sri.Santhosh P Poduval, the learned counsel appearing for the 1st respondent and Sri.Dinesh Mathew J.Murickan, the learned counsel appearing for the 3rd respondent/Insurance Company.

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

compensation. It was contended by the learned counsel for the appellant that, the monthly income fixed by the Tribunal was only Rs.4,000/- which was extremely on the lower side. The learned counsel appearing for the Insurance Company would point out that the Tribunal applied a split multiplier and granted compensation for loss of earning power during the period in which he was in service as the Head Master. According to the learned counsel for the Insurance Company, the same was not at all necessary, as there was no actual loss of earning power as regards the period of his service is concerned. The appellant continued in his service as the 'Head Master', despite suffering from the injuries. Therefore, no amount can be granted as compensation for loss of earning power pertaining to the period during which he was in service, it was pointed out.

6. After perusing the records, I find some force in the said contention. As rightly pointed out, there was no actual loss of earning power, since he continued in the employment after

sustaining the injury, the period of his service need not be taken into consideration for assessing the compensation for disability. However, as regards the compensation awarded by the Tribunal for the post-retirement period, the quantum appears to be extremely on the lower side. The Tribunal has fixed the monthly income as Rs.4,000/- for the said purpose which appears to be too low. It is an undisputed fact that the appellant was getting a monthly income of Rs.14,035/- at the time of the accident. He was aged 52 years and he was about to retire, after three years. Therefore, at any rate, atleast 50% of the said monthly income ought to have been taken by the Tribunal, for assessing the compensation for loss of earning power pertaining to the post retirement period. The said position of law is clearly settled by this Court in Raju Sebastian v United India Insurance Company [2021 (5) KHC 662]. Thus in the light of the above, the monthly income in this case is fixed as 50% of the monthly income which he was receiving at the time of the accident and the said amount thus would come to Rs.7,018/-

7. The next aspect is related to the percentage of disability. Even though the appellant produced Ext.A12 disability

certificate wherein the percentage of disability was certified as 5%, the Tribunal accepted only 4%. The only reason cited by the Tribunal for reducing the same was that the said certificate was not proved by examining the Doctor. However, the scaling down of the percentage of disability certified by the Medical Practitioner, should not have been done by the Tribunal unless there are clear discrepancies warranting such reduction. In this case, when considering the nature of injuries sustained by the appellant which are clearly explained in the award itself, I do not find any

necessity for such reduction. Therefore, the percentage of disability of 5% as certified in Ext.A12 disability certificate can be exempted. Thus while reassessing the compensation, the amount to be awarded under the head of loss of earning power owing to physical disability, would come to Rs.37,897/- (7018 x 12 x 9 x Rs.35,520/- under the said head and thus the additional amount payable by the appellant would come to Rs.2,377/-

8. When moving on to the other heads, it is seen that the amount awarded by the Tribunal towards pain and suffering was only Rs.14,000/-. It is evident from the records that he had sustained Fracture left maxilla anterior with hemosinus, depressed fracture left frontal bone with hemosinus, fracture ethmoid with

hemosinus, fracture lateral wall of left orbit. He had undergone inpatient treatment for 35 days. It is also evident from the observations in the award that he appeared before the Tribunal and the Tribunal noticed that his left eye was shortened and there was disfiguration as well. There is difficulty to tilt his eyelids and there is numbness in his forehead. In such circumstances, I am of the view that, the amount awarded by the Tribunal towards pain and suffering is inadequate and, I deem it appropriate to grant a further sum of Rs.11,000/- under the said head.

9. The next head which requires reconsideration is the

loss of amenities. The learned counsel for the Insurance Company would point out that as the compensation has been awarded for disability, no further amount needs to be granted for loss of amenities. However, the crucial aspect to be noticed in this case is that, while redetermining the compensation for disability, this Court excluded the period during which he was in service. Even though there was no actual loss of earning capacity pertaining to the said period, the fact that he has to live with that disability

during the said period and also for the remaining period, cannot be lost sight of. Therefore, for the inconvenience that may arise for living with that disability, he has to be given some compensation. When this issue was considered from that perspective, I am of the view that, the amount awarded by the

Tribunal towards loss of amenities is inadequate and in the facts

and circumstances of the case, I deem it appropriate to grant a further amount of Rs.11,000/- under the said head as well.

10. The next aspect highlighted by the learned counsel for

the appellant is relating to the actual loss of earning. The records were produced before the Tribunal to show that, he was compelled to avail leave for 52 days due to the injuries sustained. The said fact was accepted, but the Tribunal granted loss of earnings for only a period of one and a half months. Since there are ample materials indicating the exact period which he lost, the Tribunal should have calculated the compensation for the entire period of leave instead of limiting the same to one and half months. Therefore, I am of the view that, he has to be compensated for 52 days. The amount would come to Rs. 28,297/- (2,377 + 11,000 +11,000+3,920).

In the light of the aforesaid observations and findings, this appeal is allowed. The award dated 30.10.2012 passed by the

Motor Accidents Claims Tribunal, Thrissur in O.P. (MV).No.2438/2005 is hereby modified by awarding an additional compensation of Rs.28,297/- (Rupees twenty eight thousand and two hundred and ninety seven only) and the 3rd respondent herein is directed to deposit the said amount along with interest at the rate as ordered by the Tribunal with proportionate cost within a period of three months from the date of receipt of a copy of this

judgment.

Sd/- ZIYAD RAHMAN A.A JUDGE rpk