

Abdul Jabbar vs Samad

Abdul Jabbar vs Samad

SooperKanoon Citation : sooperkanoon.com/1358110

Court : Kerala

Decided On : Jun-23-2023

Judge : Honourable Mr.Justice Murali Purushothaman

Appeal No. : MACA/4010/2017

Appellant : Abdul Jabbar

Respondent : SAMAD

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE MURALI PURUSHOTHAMAN FRIDAY, THE 23RD DAY OF JUNE 2023 / 2ND ASHADHA, 1945 MACA NO. 2228 OF 2017 AGAINST THE ORDER/JUDGMENTOPMV 914/2015 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, OTTAPPALAM APPELLANT/3rd RESPONDENT: ICICI LOMBARD GENERAL INSURANCE CO.LTD ICICI LIMBARD HOUSE, 414,VEER SAVARKAR MARG,NEAR SIDHI VINAYAK TEMPLE,PRABHADEVI,MUMBAI 400 025THROUGH THE LEGAL MANAGER, ICICI LOMBARD GENERAL INSURANCE CO.KANNANKERY ESTATE, 3RD FLOOR,SHANMUGHAM ROAD, MARINE DRIVE, KOCHI 682 031 BY ADV SRI.LATHEESH SEBASTIAN

RESPONDENTS/PETITIONERS & RESPONDENTS 1 &2 : 1 ABDUL JABBAR

PANAMKUTTIYIL HOUSE, MUTHUTHALA, KOLIKKOTTUSSERI, PATTAMBI,PALAKKAD DISTRICT 679 303 2 SAINABHA W/O.ABDUL JABBAR,PANAMKUTTIYIL HOUSE, MUTHUTHALA, KOLIKKOTTUSSERI, PATTAMBI,PALAKKAD DISTRICT 679 303 3 FATHIMA DHILSHANA D/O. ABDUL JABBAR,PANAMKUTTIYIL HOUSE, MUTHUTHALA, KOLIKKOTTUSSERI, PATTAMBI,PALAKKAD DISTRICT 679 303 4 FATHIMA FIDA D/O.ABDUL JABBAR,MINOR, REPRESENTED BY HIS FATHER AND NATURAL GUARDIAN, ABDUL JABBAR, PANAMKUTTIYIL HOUSE, MUTHUTHALA, KOLIKKOTTUSSERI, PATTAMBI,PALAKKAD DISTRICT 679 303 5 SAMAD S/O.MARAKKAR, CHEKIDANKUZHIYIL HOUSE,VALANCHERY P.O, MALAPPURAM DISTRICT 676 552 6 SREE RAM NARAYANAN S/O. PARASURAMAN, KAMALAKAYAM HOUSE, VADAKKETHRA,PAZHAYANNUR P.O, PIN 680 587 BY ADVS. SRI.A.HAROON RASHEED SRI.U.K.DEVIDAS SRI.U.K.DEVIDAS SMT.P.M.SHAHIDA THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION

ON 23.06.2023, ALONG WITH MACA.4010/2017, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE MURALI PURUSHOTHAMAN FRIDAY, THE 23RD DAY OF JUNE 2023 / 2ND ASHADHA, 1945 MACA NO. 4010 OF 2017 AGAINST THE ORDER/JUDGMENTOPMV 914/2015 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, OTTAPPALAM APPELLANTS/PETITIONERS IN THE O.P.(M.V):

1 ABDUL JABBAR,AGED 49 YEARS, PANAMKUTTIYIL HOUSE, MUTHUTHALA, KOLIKOTTUSSERI, PATTAMBI, PALAKKAD DT. REPRESENTED BY HIS POWER OF ATTORNEY HOLDER SAHIDA, W/O. ABDUL JABBAR, PANAMKUTTIYIL HOUSE, MUTHUTHALA, KOLIKOTTUSSERI, PATTAMBI, PALAKKAD DT. 679 303. 2 SAHIDA,AGED 40 YEARS, W/O. ABDUL JABBAR, PANAMKUTTIYIL HOUSE, MUTHUTHALA, KOLIKOTTUSSERI, PATTAMBI, PALAKKAD DT. 679 303. 3 FATHIMA DILSHANA, AGED 19 YEARS, D/O. ABDUL JABBAR, PANAMKUTTIYIL HOUSE, MUTHUTHALA, KOLIKOTTUSSERI, PATTAMBI, PALAKKAD DT. 679 303. 4 FATHIMA FIDA,AGED 13 YEARS, REPRESENTED BY HER MOTHER SAHIDA, W/O. ABDUL JABBAR, PANAMKUTTIYIL HOUSE, MUTHUTHALA, KOLIKOTTUSSERI, PATTAMBI, PALAKKAD DT. 679 303. BY ADV SRI.A.HAROON RASHEED

RESPONDENTS/RESPONDENTS IN O.P.(MV):

1 SAMAD,AGED NOT KNOWN, S/O.MARAKKAR, CHEKIDANKUZHIYIL HOUSE, VALANCHERY P.O., MALAPPURAM DT. 676 552 (DRIVER OF KL-8 R-8430 BUS) 2 SREE RAM NARAYANAN(DELETED) AGED NOT KNOWN, S/O. PARASURAMAN, KAMALALAYAM HOUSE, VADAKKETHRA, PAZHAYANNUR P.O., 689 587, THRISSUR DT. (DRIVER OF KL-8 R-8430 BUS) 3 ICICI LOMBARD GENERAL INSURANCE COMPANY LTD. ICICI LOMBARD HOUSE, 414, VEER SAVARKAR MARG, NEAR-SIDHI VINAYAK TEMPLE, PRABHADEVI, MUMBAI - 400 025. (POLICY NO. 3004/A/I-25980538/00/000 AND VALID UP TO 3/4/15). (RESPONDENT NO. 2 IS DELETED FROM THE PARTY ARRAY AT THE RISK OF APPELLANT AS PER ORDER DATED 10.09.2021 IN IA

BY ADVS. SRI.U.K.DEVIDAS ADV. SRI. .LATHEESH SEBASTIAN - SC THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 23.06.2023, ALONG WITH MACA.2228/2017, THE

COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

MURALI PURUSHOTHAMAN, J.

Dated this the 23rd day of June, 2023

JUDGMENT

Since these appeals arise from the common award dated 10.4.2017 in O.P.(MV) No. 914/2015 on the files of the Motor Accidents Claims Tribunal, Ottappalam, they are heard together and are disposed of by this common judgment. The parties to the appeals will hereinafter be referred to as petitioners and respondents in accordance with their status in the claim petition.

2. M.A.C.A No.2228/2017 is preferred by the 3rd respondent insurance company contending that the amount of compensation awarded by the Tribunal is excessive and M.A.C.A. No. 4010/2017 is filed by the petitioners contending that compensation awarded by the Tribunal is inadequate.

3. The petitioners 1 and 2 are the parents of deceased Muhammed Dishad. The petitioners 3 and 4 are the minor siblings of the deceased. According to the petitioners, on 22.3.2015, while the deceased Muhammed

Dishad was riding his motorcycle, a bus bearing registration No. KL-8/R-8430, driven by the 1st respondent, hit against the motorcycle and the deceased sustained serious injuries and succumbed to the injuries on 9.4.2015 while undergoing treatment. The petitioners claimed an amount of Rs.25 lakhs as compensation for the death of the deceased. The Tribunal found that the accident happened due to the negligence on the part of the first respondent and awarded an amount of Rs.21,69,350/- as compensation. The 3rd respondent insurer was held liable to indemnify the 2nd respondent owner.

4. According to the learned counsel for the insurance company, the amount awarded by the Tribunal

is excessive and exorbitant. The learned counsel for the petitioners would contend that the amount awarded is totally inadequate. In the said circumstances, this Court has to see whether the compensation awarded is just and reasonable.

5. The deceased was a B.Com student aged 20

years at the time of accident. The Tribunal fixed the notional income of the deceased as Rs.10,000/- per month. Since the deceased was not having a permanent employment, Tribunal could have added only 40% of the income towards future prospects in the light of the decision in National Insurance Company Limited v. Pranay Sethi and others [2017 (4) KLT 662 (SC)] Accordingly, I re-fix the notional income of the deceased as Rs.14,000/- (Rs.10000+10,000x40/100). The Tribunal has rightly adopted the multiplier of 18. The deceased was a bachelor and of the income has to be deducted towards his personal and living expenses. Accordingly, compensation for loss of dependency is re-worked as (Rs.14,000x12x18x1/2) Rs.15,12,000/-. Since The Tribunal has already awarded an amount of Rs.16,20,000/- under the head loss of dependency, an amount of Rs.1,08,000/- has to be deducted from the total compensation.

6. Towards funeral expenses, an amount of

25,000/- has been awarded by the Tribunal. In the light of the decision in Pranay Sethi (supra), petitioners are entitled only for an amount of Rs.15,000/- under the head funeral expenses. Therefore, an amount of Rs.10,000/- has to be deducted from the total compensation.

7. Towards compensation for loss of love and

affection, an amount of Rs.1,00,000/- has been awarded by the Tribunal. In the light of the decision in Magma General Insurance Company Limited v. Nanu Ram Alias Chuhru Ram and Others [(2018) 18 SCC 130] petitioners are entitled for Rs.40,000/- each towards loss of consortium. Accordingly, petitioners are entitled for an amount of Rs.1,60,000/- (Rs.40,000x4) towards loss of consortium. Since the petitioners are awarded Rs.1,60,000/- under the head loss of consortium, they are not entitled for separate amount under the head loss of love and affection

[United India Insurance Company Ltd., v. Satinder Kaur & Ors. (2021) 11 SCC 780]. Therefore, the amount of Rs.1,00,000/- awarded under the head love and affection has to be deducted.

8. I find the compensation awarded under other heads as just and reasonable.

9. Accordingly, the award passed by the Tribunal is

modified and the petitioners will be entitled only for an amount of Rs.21,11,350/-. (Rs.21,69,350-Rs.1,08,000- 10,000+Rs.1,60,000- 1,00,000). Pursuant to the direction of this Court dated 18.7.2017 in M.A.C.A.No.2228/2017, the insurance company has deposited 50% of the award amount with interest and costs before the Tribunal. The insurance company shall deposit the balance amount as modified by this Court with 9% interest p.a. and proportionate costs before the Tribunal within a period of two months. The appeals are disposed of as above.
Sd/- MURALI PURUSHOTHAMAN JUDGE al/-+

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