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Abdul Basith @ Basith (Minor), vs Yasar and Others

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Court : Kerala

Decided On : Dec-17-2019

Judge : Honourable Mr. Justice Anil K.Narendran

Appeal No. : MACA/668/2011

Appellant : Abdul Basith @ Basith (Minor),

Respondent : Yasar and Others

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN TUESDAY, THE 17TH DAY OF DECEMBER 2019 / 26TH AGRAHAYANA, 1941 MACA.No.668 OF 2011 AGAINST THE AWARD IN OP(MV)No.1597/2005 DATED 14-05-2010 OF THE PRINCIPAL MOTOR ACCIDENTS CLAIMS TRIBUNAL,KOZHIKODE APPELLANT: ABDUL BASITH @ BASITH (MINOR), S/O.ASHRAF N, AGED 17 YEARS REP.BY FATHER ASHRAF.N,, NELLIYOTTU HOUSE, PO PALERI,VIA KUTTIYADI,KOZHIKODE, (NOW RESIDING AT KEEZHUVANAPALAM, PO NALLALAM,, CALICUT). BY ADVS. SRI.K.M.JAMALUDHEEN SMT.LATHA PRABHAKARAN RESPONDENTS:

1 YASAR S/O.KUNHABDULLA, KAITHERI MEETHAL HOUSE, PO PALERI VIA KUTTIYADI,KOZHIKODE 673 508. 2 AMMED, S/O.IBRAHIM, AGED 55 YEARS NELLIYOTTU HOUSE,PO PALERI,KOZHIKODE 673 508. 3 THE NEW INDIA ASSURANCE CO.LTD. BRANCH OFFICE, TRIPURI BUILDING, EAST NADAKKAVU,, CALICUT 673 011. BY ADV. SRI.N.S.MOHAMMED USMAN THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON

17.12.2019, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: MACA.No.668 OF 2011 2

JUDGMENT

The appellant is the claimant in O.P(MV)No.1597 of 2005 on the file of the Principal Motor Accidents Claims Tribunal, Kozhikode, a claim petition filed under Section 166 of the Motor Vehicles Act, 1988, claiming compensation on account of the injuries sustained by him in a motor accident, which occurred on 12.04.2005, while he was travelling as pillion rider on a motorcycle bearing registration No.KL-18/A-9894 owned by the 1 st respondent, ridden by the 2nd respondent and insured with the 3rd respondent. At the place of accident, the motorcycle overturned and the appellant/claimant, who was then a minor aged 12 years, sustained injuries. Alleging that the accident occurred due to the rash and negligent riding of motorcycle by the 2 nd respondent, claim petition was filed before the Tribunal claiming a total compensation of Rs.3,00,000/-, under various heads.

2. Before the Tribunal, the 1st respondent owner and the

2nd respondent rider remained absent and they were set ex-parte. The 3rd respondent insurer filed written statement, which was followed by an additional written statement, admitting insurance MACA.No.668 OF 2011 3 coverage of the motorcycle involved in the accident; however, denying negligence alleged against

the 2nd respondent rider. The insurer contended that the compensation claimed is highly excessive.

3. Before the Tribunal, Exts.A1 to A16 were marked on the side of the appellant/claimant. The document marked as Ext.C1 is the report of the Medical Board. The case records were marked as Exts.X1 and X2.

4. After considering the pleadings and materials on

> record, the Tribunal arrived at a conclusion that the accident occurred due to the rash and negligent riding of the motorcycle by the 2nd respondent rider. Since insurance coverage of the said vehicle was not in dispute, the insurer was held liable to indemnify the insured. Under various heads, the Tribunal awarded a total compensation of Rs.1,89,447/-, together with interest at the rate of 7% per annum from 16.7.2005 till date of deposit with cost of Rs.1250/-, with proportionate cost and the insurer was directed to satisfy the award.

5. Dissatisfied with the quantum of compensation awarded by the Tribunal, the appellant/claimant is before this MACA.No.668 OF 2011 4 Court in this appeal.

6. Heard the learned counsel for the appellant/claimant and the learned Standing Counsel for the 3rd respondent insurer.

7. The issue that arises for consideration in this appeal is as to whether the appellant is entitled for enhancement of the compensation awarded by the Tribunal under various heads.

8. In State of Haryana v. Jasbir Kaur [(2003) 7 SCC

> 484] the Apex Court held that the Tribunal under Section 168 of the Motor Vehicles Act, 1988 is required to make an award determining the amount of compensation which is to be in the real sense 'damages' which in turn appears to it to be 'just and reasonable'. It has to be borne in mind that compensation for loss of limbs or life can hardly be weighed

in golden scales. But at the same time it has be to be borne in mind that the compensation is not expected to be a windfall for the victim. Statutory provisions clearly indicate that the compensation must be 'just' and it cannot be a bonanza; not a source of profit; but the same should not be a pittance.

9. In National Insurance Company Ltd. v. Pranay Sethi [(2017) 16 SCC 680] a Constitution Bench of the Apex MACA.No.668 OF 2011 5

Court held that, Section 168 of the Motor Vehicles Act, 1988 deals with the concept of 'just compensation' and the same has to be determined on the foundation of fairness, reasonableness and equitability on acceptable legal standard because such determination can never be in arithmetical exactitude. It can never be perfect. The aim is to achieve an acceptable degree of proximity to arithmetical precision on the basis of materials brought on record in an individual case. The conception of 'just compensation' has to be viewed through the prism of fairness, reasonableness and non-violation of the principle of equitability.

10. In the instant case, the compensation awarded by the

Tribunal under various heads reads thus; The compensation claimed Amount Amount Basis/vital details in under various heads claimed allowed a nutshell 1 Transport to hospital 8,000/- 2,500/- 2 Extra Nourishment 3,000/- 1,000/- 3 Treatment Expenses 1,20,000 90,047 97,154 - 7,107 4 Bystanders expenses 5,000 1,900 100x19 days 5 Pain and sufferings 1,00,000 15,000 6 Permanent disability 1,00,000 54,000 15000x15x24/100 7 Loss of studies 50,000 25,000

Total 1,89,447 MACA.No.668 OF 2011 6

11. At the time of accident, the appellant was a minor,

aged 12 years. The document marked as Exts.A2 and A3 are the wound certificates and Exts.A4 to A6, A12 and A13 are discharge summaries. In the

accident the appellant sustained crush injury

(Lt) Knee exposing patella, lower and femur and knee joint,

> Fracture medial condyle (Lt) femur, Fracture patella (Lt) Avulsion patella tendon (Lt) Multiple abrasion all over body. Ext.A12 is discharge summary issued from Baby Memorial Hospital showing that he was admitted on 12-04-2005 and discharged on 21-04-2005. Subsequently he underwent treatment at Pushpagiri Medical College and other hospitals for the stiffness of left knee. Ext.A4 discharge summary issued from Pushpagiri Medical College shows that he was admitted there on 24-05-2007 and discharged on 28-05-2007 for post traumatic left knee stiffness. Ext.A5 is a discharge summary issued from Manipal Hospital showing that the appellant was admitted there on 24-01-2006 and discharged on 25-01-2006. Ext.A6 is another discharge summary issued from Tejasvini Hospital, Mangalore showing he was admitted there on 2-05-2006 and discharged on 5-05-2006. A15 series are photographs of the appellant showing present condition of his

 fractured leg. Ext.X1 series and X2 series are case records received from Pushpagiri Medical College Hospital and Baby Memorial Hospital. In Ext.C1 disability certificate issued by the Medical Board the permanent disability of the appellant, on account of the injuries sustained in the accident, is assessed as 24%.

12. In Master Mallikarjun v. Divisional Manager,

> National Insurance Company Limited [(2014) 14 SCC 396], a decision relied on by the learned counsel for the appellant, the Apex Court laid down the principles regarding payment of compensation for injuries sustained by children, resulting permanent disability. In the said decision, the Apex Court held that in the case of children suffering disability on account of motor accident, the appropriate compensation on all other heads in addition to the actual expenditure for treatment, attendant, etc.,

should be, if the disability is above 10% and up to 30% to the whole body, Rs.3 lakhs; up to 60%, Rs.4 lakhs; up to 90%, Rs.5 lakhs and above 90%, it should be Rs.6 lakhs. For permanent disability up to 10%, it should be Rs.1 lakh, unless there are exceptional circumstances to take a different yardstick. Paragraph

12 of the said decision reads thus; 12. Though it is difficult to have an accurate assessment of the compensation in the case of children suffering disability on account of a motor vehicle accident, having regard to the relevant factors, precedents and the approach of various High Courts, we are of the view that the appropriate compensation on all other heads in addition to the actual expenditure for treatment, attendant, etc., should be, if the disability is above 10% and up to 30% to the whole body, Rs.3 lakhs; up to 60%, Rs.4 lakhs; up to 90%, Rs.5 lakhs and above 90%, it should be Rs.6 lakhs. For permanent disability up to 10%, it should be Re.1 lakh, unless there are exceptional circumstances to take different yardstick. In the instant case, the disability is to the tune of 18%. Appellant had a longer period of hospitalisation for about two months causing also inconvenience and loss of earning to the parents. The appellant, hence, would be entitled to get the compensation as follows:- Head Compensation amount Pain and suffering already undergone and to be Rs.3,00,000/- suffered in future, mental and physical shock, hardship, inconvenience and discomforts and loss of amenities in life on account of permanent disability. Discomfort, inconvenience and loss of earnings to Rs.25,000/- the parents during the period of hospitalisation. Medical and incidental expenses during the period Rs.25,000/- of hospitalisation for 58 days. Future medical expenses for correction of the Rs.25,000/- malunion of fracture and incidental expenses for such treatment. TOTAL:- Rs.3,75,000/-

13. Going by the law laid down by the Apex Court in

Master Mallikarjun's case (supra), for permanent disability is above 10% and upto 30% to the whole body, the compensation under the head pain and suffering already undergone and to be suffered in future, mental and physical shock, hardship, inconvenience and discomforts and loss of amenities in life on account of permanent disability shall be Rs.3,00,000/-. In the instant case, the permanent disability of the appellant assessed in Ext.C1 disability certificate is 24%. Therefore, the appellant is entitled for a sum of Rs.3,00,000/- as compensation under this head.

14. In Mallikarjun's case, the injured had undergone

inpatient treatment for a period of 58 days. Therefore, under the head discomfort, inconvenience and loss of earnings to the parents during the period of hospitalisation, the Apex Court awarded a sum of Rs.25,000/-. Considering the nature of injuries sustained and the inpatient treatment the appellant had undergone for 20 days, a sum of Rs.12,500/- can be granted as compensation under this head.

15. In Mallikarjun's case, under the head medical and MACA.No.668 OF 2011 10

incidental expenses during the period of hospitalisation, the Apex Court awarded a sum of Rs.25,000/-. In the instant case, Ext.A5 series of medical bills are for a sum of Rs.9,897/-. Therefore, towards medical and incidental expenses, including transportation to hospital, the appellant is granted a sum of Rs.20,000/-.

16. In Mallikarjun's case, under the head future medical

expenses for correction of the malunion of fracture and incidental expenses for such treatment, the Apex Court awarded a sum of Rs.25,000/-. In the instant case, as noticed by the Tribunal in the

impguned award, even after treatment there was stiffness of left knee, for which the appellant underwent treatment at different hospitals. Therefore, the appellant is granted an amount of Rs.25,000/- under this head. In the result, the total compensation in O.P.(MV)No.1597 of 2005 is re-fixed as Rs.3,57,500/- (3,00,000 + 12,500 + 20,000 + 25,000) in this appeal. In the result, the appellant will be entitled for payment of an additional compensation of Rs.1,68,053/- (Rupees one lakh sixty eight thounsand and fifty three only) [3,57,500-1,89,447] in this appeal, which will carry interest at the rate of 8% per annum from the date of petition till realisation

excluding the period of delay of 231 days in filing this appeal, which was condoned by order dated 15.06.2017 subject to the condition that the appellant will not be entitled to interest on the compensation amount, if any, to be enhanced, for the period of delay. The 3rd respondent/insurer shall satisfy the additional compensation granted in this appeal, together with interest, within a period of two months from the date of receipt of a certified copy of this judgment, after deducting the liability, if any, of the appellant/claimant towards Balance Court Fee and Legal Benefit Fund. Disbursement of the additional compensation granted in this appeal shall be made to the appellant/claimant as per the directives issued by this Court in Circular No.3 of 2019 dated 06.09.2019 and clarified further in Official Memorandum No.D1-

This appeal is disposed of as above. No order as to costs. Sd/- ANIL K.NARENDRAN JUDGE ska

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