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Money S. Vs. Jithinkumar N.

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Court : Kerala

Decided On : Jan-12-2015

Judge : Honourable Mr.Justice T.R.Ramachandran Nair

Appellant : Money S.

Respondent : Jithinkumar N.

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR & THE HONOURABLE SMT. JUSTICE P.V.ASHA MONDAY, THE12H DAY OF JANUARY201522ND POUSHA, 1936 MACA.No. 1129 of 2013 () ---------- AGAINST THE AWARD IN OPMV14782009 of M.A.C.T.,ERNAKULAM DATED2912-2012 APPELLANT:PETITIONER ---------- MONEY S., AGED46YEARS S/O.SOOSAPPAN, PALLIVILAKAM HOUSE, R.C.STREET BALARAMAPURAM.P.O., NEYYATTINKARA, TRIVANDRUM. BY ADVS.SRI.MATHEWS K.PHILIP SMT.T.MANASY RESPONDENTS:RESPONDENTS ---------- 1. JITHINKUMAR N. S/O.NARAYANAN, KOLAPPILLIL HOUSE, THEKKUMBHAGOM THRIPPUNITHURA.P.O.

2. MANUPRASAD S/O.MANOHARAN, EDAMPADATH HOUSE, CHOORAKKADU THIRUVAMKULAM.P.O.

3. THE NEW INDIA ASSURANCE COMPANY LIMITED741A, THRIPPUNITHURA, ERNAKULAM. R3 BY ADV. SRI.VIJU THOMAS R3 BY ADV. SMT.M.MEENA JOHN R BY SRI.A.A.ZIYAD RAHMAN THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON1201-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: T.R.RAMACHANDRAN NAIR & P.V ASHA, JJ.

---------- M.A.C.A No.1129 of 2013 ---------- Dated this the 12th day of January, 2015

JUDGMENT

Ramachandran Nair, J.

This appeal is filed by the claimant seeking further enhancement of the compensation. The accident in this case occurred on 23.04.2009 at about 7.30 p.m, while he was walking along Kadavanthra-Kathrikadavu Road towards south. The offending vehicle is a Scooter bearing Reg.No.KL-07AN-6556 which came from northern side and hit the appellant causing serious injuries. He was immediately taken to Indira Gandhi Memorial Hospital, Kadavanthra and from there, he was referred to the Medical Trust Hospital, Ernakulam. He was treated as an inpatient there from 23.04.2009 to 04.05.2009, 27.06.2009 and 28.06.2009.

2. The appellant sustained the following injuries:

"1. Fracture base of 1st left meta carpel, right maxilla and lat wall of right orbit, (2) third ventricular bleed, (3) L.W on the right ear lobe, (4) Multiple abrasions over face, the left knee, right forearm and right cheek, (5) Contusion with abrasion on the right cheek." 3. Before the Tribunal documentary evidence was adduced as Exts.A1 to A10 and Ext.C1 is the medical certificate M.A.C.A No.1129 of 2014 2 issued from the Medical College Hospital, Kottayam certifying the disability.

4. The learned counsel for the appellant submitted that the appellant is employed as a Driver and in the light of the partial permanent disability namely, impairment of vision of one eye, he may not be able to carry out his profession as a Driver after retirement from service. It is submitted that even though neurological

disability is also there at 12%, the Tribunal has taken the physical disability at 20% on the finding that the appellant is still in service. The compensation for the post retirement period has been calculated by adopting whole body disability at 20%, by taking multiplier as 9 and by fixing a notional amount of monthly income as Rs.4,000/-. It is submitted that the said method is not correct, as the disability is on a higher side ie. at 50% to the eye.

5. Going by the details of the treatment undertaken by him, he was mainly treated in the opthalmology department and OFMS consultations were given. Plastic surgery was also performed. The Tribunal has noted in para.8 of the judgment that Exts.A5 and A6 will show that he needs further treatment.

6. At the time of the accident, he was working as a driver employed in the High Court service. His gross salary for the M.A.C.A No.1129 of 2014 3 months of May, 2009 was Rs.9,187/-, June, 2009 was Rs.8,981/- and July, 2009 was Rs.10,722/-.

7. The Tribunal was of the view that since he is still in service, there will not be any reduction in his earnings upto the date of retirement and he can continue in service till he attains the age of 56 years. His earning capacity has been calculated for the post retirement period and accordingly Rs.4,000/- has been taken as the monthly income.

8. We note that the Tribunal has fixed the compensation in the following manner: Sl.No. Head of claim Amount 1 Loss of earnings Rs. 20,542.00 2 Transport to hospital and back to home Rs. 1,000.00 3 Extra nourishment Rs. 1,000.00 4 Damage to clothes and articles Rs. 500.00 5 Medical expenses Rs. 54,000.00 6 Compensation for future medical expenses Rs. 10,000.00 7 Bystander's expenses Rs. 2,800.00 8 Compensation for pain and sufferings Rs. 20,000.00 Compensation for continuing and permanent Rs. 10,000.00 9 disability Compensation for loss of amenities and Rs. 10,000.00 10 enjoyment in life 11 Compensation for loss of earning power Rs. 86,400.00 Total Rs. 2,16,242.00 9. In a matter like this where the accident has resulted in partial permanent disability to certain parts of the body, the M.A.C.A No.1129 of 2014 4 principles for granting compensation will have to be applied considering various aspects. In this case, since evidently he has not lost the job and is still in service, the question is

whether the multiplier method has to be taken by assessing percentage of disability or any other alternate relevant method has to be taken. The legal principles in this regard have been settled by various decisions of the Apex Court. When permanent disability has resulted in loss of job of a person or earning power, the said aspects have to be considered, but herein he has not lost the job and hence there is no requirement to award compensation for loss of earning power. Therefore the method by which compensation will have to be assessed for loss of enjoyment of life and loss of amenities of life coupled with adequate compensation for shortened expectation of life of the injured will have to be granted, apart from the amount towards pain and sufferings, bystander's expenses, medical expenses and like other heads.

10. Therefore, we proceed to consider various aspects. Ext.A10 is the certificate issued by the Medical Trust Hospital certifying that he was admitted for head injuries in April, 2009 and on a perusal of the same, it can be seen that Visual fields in July 2009 showed right homonymous hemianopia and this can be M.A.C.A No.1129 of 2014 5 a sequelae of head injury. The Tribunal did not admit the same since the Doctor who issued Ext.A10 has not been examined. But the disability certificate issued from the Medical College Hospital, Kottayam shows various details which are discussed in para.9 of the award. The Medical Board assessed the appellant's opthalmic permanent disability at 50% and neurological disability at 12%. The learned counsel for the appellant submitted that due to the injury caused to his right eye and the consequent disability, his vision has been affected which is a permanent one. Coupled with the same, neurological disability is also there. Of course, the extent of the disability and its impact on his body are matters to be considered. At least to that extent, the situation has to be assessed for the purpose of assessing compensation, it is submitted.

11. Therefore, we will be justified in awarding due compensation for loss of enjoyment of life and loss of amenities. His normal avocations in life which were being undertaken by him as before the accident have been greatly affected. The impairment as far as his vision is concerned will be affecting his enjoyment of life and the amenities.

12. In that view of the matter, we find that he should be adequately compensated for loss of enjoyment of life and loss of M.A.C.A No.1129 of 2014 6 amenities.

13. For pain and suffering, Rs.20,000/- has been awarded by the Tribunal, which according to the learned counsel is totally inadequate. He was treated initially in the Indira Gandhi Memorial Hospital, Kadavanthra and thereafter in the Medical Trust Hospital. He has undertaken treatment as an inpatient from 23.04.2009 to 04.05.2009, 27.06.2009 to 28.06.2009. He had suffered certain fractures and head injuries also. Therefore as compensation for pain and suffering, we are of the view that, an amount of Rs.50,000/- can be granted as adequate compensation. Bystander's expenses have been granted at Rs.200/- per day for 14 days and we enhance the same to Rs.250/- per day for 14 days, which will come to Rs.3,500/-. We find that for the future medical expenses, Rs.10,000/- has been granted. Going by the certificate issued, future treatment has been advised also and hence we enhance the same to Rs.15,000/-. The Tribunal has not granted any amount towards shortened expectation of life of the appellant. The said item of head is available since the appellant may expect adverse circumstance in life due to permanent disability. We grant an amount of Rs.30,000/- towards shortened expectation of life. Since the disabilities have caused impairment of vision and M.A.C.A No.1129 of 2014 7 neurological disability, it is a case where the appellant is entitled to be compensated adequately under the said head. We are of the view that since the effect of disabilities will be life long, the appellant will have to be adequately compensated and we grant an amount of Rs.2 lakhs under the head `loss of enjoyment of life and loss of amenities'. This will be in substitution of amounts awarded under the heads, continuing permanent disability and for loss of earning power. Therefore, we modify the award in the following manner: Sl.No. Head of claim Amount 1 Loss of earnings Rs. 20,542.00 2 Transport to hospital and back to home Rs. 1,000.00 3 Extra nourishment Rs. 1,000.00 4 Damage to clothes and articles Rs. 500.00 5 Medical expenses Rs. 54,000.00 6 Compensation for future medical expenses Rs. 15,000.00 7 Bystander's expenses Rs. 3,500.00 8 Compensation for pain and sufferings Rs. 50,000.00 Compensation for loss of amenities and Rs. 2,00,000.00 9 enjoyment in life 10 Compensation for shortened expectation of life Rs. 30,000.00 11 Total Rs. 3,75,542.00 round off to Rs.3,75,540.00 (Rupees Three lakhs seventy five

thousand five hundred and forty only) The appellant will be entitled to a total compensation of M.A.C.A No.1129 of 2014 8 Rs.3,75,540/- (Rupees Three lakhs Seventy five thousand five hundred and forty only) along with 9% interest per annum from the date of petition. The Insurance Company is directed to deposit the entire amount of compensation within a period of three months, less the amount already deposited before the Tribunal and on such deposit being made, the claimant can withdraw the amount. The appeal is allowed accordingly. No costs. Sd/- T.R.RAMACHANDRAN NAIR Judge Sd/- P.V.ASHA Judge rtr/ /true copy/ P.S to Judge

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