

Wilson Jacob Vs. Shekharan

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Court : Kerala

Decided On : Nov-25-2014

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

Appellant : Wilson Jacob

Respondent : Shekharan

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 TUESDAY, THE 25^H DAY OF NOVEMBER 2014 4TH AGRAHAYANA, 1936 MACA.No. 1970 of 2009 ()
----- AGAINST THE AWARD IN OPMV4561998 of
MACT,KALPETTA DATED 27-08-2008 APPELLANT(S)/PETITIONER:
----- WILSON JACOB, ALACKAL, SUGAMDHAGIRI,
POZHUTTANA, WAYNAD BY ADV. SRI.J.OM PRAKASH
RESPONDENT(S)/RESPONDENTS: ----- 1. SHEKHARAN,
S/O.CHANDU, PUCHACHIKUNNI HOUSE, KARIMBADI PO, WAYNAD.

2. THE MANAGING DIRECTOR, SUGANDHAGIRI CARDAMOM PROJECT,
(THE PROJECT OFFICER, ITDP KALPETTA, WAYNAD) 3. THE NEW INDIA
ASSURANCE CO.LTD, KALPETTA, WAYNAD. R,R3 BY ADV. SRI.VIJU
THOMAS R,R3 BY ADV. SMT.M.MEENA JOHN THIS MOTOR ACCIDENT
CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 25-11-2014, THE

COURT ON THE SAME DAY DELIVERED THE FOLLOWING: MACA.No. 1970 of 2009 () A P P E N D I X APPELLANT'S EXHIBITS ANNEXURE-A : TRUE COPY OF THE REPORT OF THE INSPECTOR OF MOTOR VEHICLE IN RESPECT OF THE JEEP DT.9.10.97 ISSUED BY THE S.I OF POLICE, VYTHIRI. ANNEXURE-B: TRUE COPY OF THE REPORT OF THE INSPECTOR OF MOTOR VEHICLE IN RESPECT OF THE MOTOR BIKE DT.9.10.97 ISSUED BY THE S.I OF POLICE, VYTHIRI. ANNEXURE-C: TRUE COPY OF THE SCENE MAHAZAR IN CRIME NO.123/97 OF THE VYTHIRI POLICE STATION ISSUED BY THE S.I OF POLICE, VYTHIRI DT.8.10.97. ANNEXURE-D: TRUE COPY OF THE SALARY CERTIFICATE OF THE APPELLANT DT.24.3.1998 ISSUED BY THE OFFICE MANAGER, SUGANDHAGIRI CARDAMOM PROJECT DT.24.3.1998. ANNEXURE-E: TRUE COPY OF THE SALARY CERTIFICATE OF THE APPELLANT DT.12.4.2004. /TRUE COPY/ P.S TO JUDGE T.R.RAMACHANDRAN NAIR & P.V ASHA, JJ.

----- M.A.C.A No.1970 of 2009-C
----- Dated this the 25th day of November,
2014

JUDGMENT

Ramachandran Nair, J.

The appellant herein is the claimant in O.P(MV) No.456/1998. The accident occurred on 07.10.1997. He was driving a Motorcycle bearing Reg.No.KLW/445 on the said day and the offending vehicle, namely a Jeep bearing No.KL122207 which was coming from the opposite direction hit on the Motorcycle and he sustained serious injuries.

2. The learned counsel for the appellant Sri Omprakash submitted that the compensation awarded is too low considering the nature and seriousness of the injuries, period of treatment and the occupation of the claimant as well as the disability suffered by him.

3. The learned counsel for the 3rd respondent Sri Viju Thomas submitted that the appellant has produced various documents in the appeal and therefore the matter

will have to be remanded back to the Tribunal for consideration. M.A.C.A No.1970 of 2009-C24. One of the aspects which went against the appellant is the finding regarding contributory negligence that also at 50%. Our attention was invited to the finding in para.8 of the impugned award by the learned counsel. The Tribunal was of the view that there is a contention raised in the written statement of respondents 2 and 3 that the accident occurred partly due to the rash and negligent driving of the Motorcycle by the appellant himself. The finding on this aspect went against the appellant based on the observation by the Tribunal that he had deposed before the Tribunal that he saw the Jeep coming in the opposite direction at a distance of 50 metre, but he did not take any precaution to avert an accident by stopping the Motorcycle or to move the vehicle to the extreme side of the road. We cannot agree with the above finding. It is not expected of a person driving a motor vehicle to stop immediately on sighting a vehicle coming from the opposite side. We have gone through the evidence of PW1. His evidence will show that he was driving the Motorcycle through a pocket road and the vehicle was being driven through the left side of the road. The Jeep was seen by him at a distance of 50 metre away as it was coming down the road. This alone is the evidence. We do not M.A.C.A No.1970 of 2009-C3 understand the said statement made by PW1 before the Tribunal as one casting burden on him to stop his vehicle by sighting the Jeep coming from the opposite side. It is clear from the evidence that the Jeep was full of passengers and the road at that place had 2 metres width also. Therefore in the absence of any other evidence that he had driven crossing the middle portion of the road towards right side namely to his wrong side, there is no contributory negligence on the part of the appellant. Apart from the same, as rightly pointed out by Sri Omprakash when the respondents alleged before the Tribunal that the accident is the result of the contributory negligence on the part of the appellant, they should have adduced evidence in the matter. But the learned counsel for the 3rd respondent Sri Viju Thomas submitted that even the Tribunal has observed that the appellant did not produce the scene mahazar or the A.M.V.I's report. We find from the records that Ext.A1 is the First Information Report and Ext.A2 is the wound certificate. These will show that he has sustained injuries in the accident. Since the burden to prove that there was contributory negligence is on the side of the respondents, we cannot cast burden on the

appellant to prove the negative. In that view of the matter, we find no reason to accept the finding M.A.C.A No.1970 of 2009-C4 by the Tribunal that the appellant will be entitled to get only half of the compensation amount awarded and we vacate the said finding.

5. The next aspect is regarding the monthly income. As against the claim of Rs.6,000/-, the monthly income arrived at by the Tribunal is Rs.2,100/-. According to the appellant, he was working as a Junior Field Officer at that point in the Sugandhagiri Cardamom Project. It is seen from the evidence that he lost the job subsequently as the project itself was stopped. Of course the details of the payment received by him were not available by any documentary evidence produced and available before the Tribunal. Before this Court, the appellant has produced along with an affidavit salary certificate dated 24.01.1998 and another certificate dated 12.04.2004. The oral evidence in this case shows that the appellant had claimed monthly salary at Rs.6,000/-. But going by the certificates also his pay in 1998 was Rs.2,098/- and the D.A component was Rs.3,291/-. It is not clear how the Tribunal has fixed the monthly income of the appellant at Rs.2,100/-. As rightly pointed out by the learned counsel for the appellant, there is no challenge on the aspect of drawing of salary by the appellant. Even then in M.A.C.A No.1970 of 2009-C5 the absence of documentary evidence produced before the Tribunal, it will be proper for this Court to fix the amount at Rs.4,000/- per mensem. It cannot be said to be excessive also. As regards the disability aspect is concerned, 15% disability, going by the certificate Ext.C1, has been assessed and we accept the same.

6. The Tribunal has awarded compensation in the following manner: Sl.No. Head of claim Amt. 1 Compensation for disability Rs. 56,700.00 2 Loss of earning Rs. 3,000.00 3 Transport to Hospital Rs. 1,000.00 4 Extra nourishment Rs. 500.00 5 Damage to clothing and articles Rs. 250.00 6 Bystander's expenses Rs. 500.00 7 Medical expenses Rs. 16,550.00 8 Pain and sufferings Rs. 6,000.00 TOTAL Rs. 84,500.00 7. The period of treatment going by the evidence discussed in para.8 will be 40 days in two different spells. We find from the discussion therein that Ext.A2 is the wound certificate issued from the Fathima Matha Mission Hospital, Kalpetta. X-ray shows (R) wrist shown communitied fraction of M.A.C.A No.1970 of

2009-C6radius, (L) wrist shown communitied fracture of radius and there was deformity of the RB(R) forearm direct region and restriction of all movements in that region. He was again admitted in the Kovai Medical Center and Hospital Limited on 28.10.1997 and was discharged on 12.11.1997. Ext.A7 certificate series are the Tripsheets produced to prove the same.

8. The Tribunal has awarded only Rs.16,550/- towards medical expenses. Exts.A3 and A5 series are the medical bills produced which show that a total amount of Rs.40,650/- has been expended by him towards the purchase of medicines etc. and we accept the same.

9. In that view of the matter, we find that the compensation awarded towards pain and suffering is also considerably low. Therefore, we refix the compensation in the following manner: Sl.No. Head of claim Amt. 1 Compensation for permanent disability Rs. 90,000.00 2 Loss of earning Rs. 3,000.00 3 Transport to Hospital Rs. 4,000.00 4 Extra nourishment Rs. 2,000.00 5 Damage to clothing and articles Rs. 250.00 6 Bystander's expenses Rs. 4,000.00 M.A.C.A No.1970 of 2009-C7Sl.No. Head of claim Amt. 7 Medical expenses Rs. 40,650.00 8 Pain and sufferings Rs. 20,000.00 TOTAL Rs.1,63,900.00 10. Therefore, the appellant will be entitled to a total compensation of Rs.1,63,900/- (Rupees One lakh sixty three thousand nine hundred only). Going by the decision in Supei Dei(Smt.) & Ors. v. National Insurance Co. Ltd. and Anr. [(2009)4 SCC513, interest shall be payable on the total compensation awarded, at the rate of 9% per annum from the date of petition till payment. We direct the Insurance Company to deposit the entire amount within three months, less the deposit if any already made, 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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