

Cleetus Vs. Alex

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Court : Kerala

Decided On : Jan-27-2015

Judge : Honourable Mr. Justice a.Muhamed Mustaque

Appellant : Cleetus

Respondent : Alex

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 27TH DAY OF JANUARY 2015 7TH MAGHA, 1936 MACA.No. 472 of 2006 () ----- AGAINST THE AWARD IN OPMV27572000 of MACT, THRISSUR APPELLANT/PETITIONER: ----- CLEETUS, S/O.ASSARIYA, MUNICIPAL STAFF QUARTERS, KOKKALAI, THRISSUR. BY ADV. SRI.SHEJI P.ABRAHAM RESPONDENT(S)/RESPONDENTS: ----- 1. ALEX, S/O.JOHN, AKKARA HOUSE, POLICE STATION ROAD, THRISSUR.

2. A.K.JOHN, AKKARA HOUSE, POLICE STATION ROAD, THRISSUR.

3. THE UNITED INDIA INSURANCE CO LTD., BRANCH OFFICE, KURUPPAM ROAD, THRISSUR. R,R3 BY ADV. SRI.P.JAYASANKAR R,R2 BY ADV. SRI.DILIP J AKKARA THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 27-01-2015 ALONG WITH MACA NO.494/2006, THE

COURT ON THE SAME DAY DELIVERED THE FOLLOWING:
T.R.RAMACHANDRAN NAIR & P.V ASHA, JJ.

----- M.A.C.A Nos.472 and 494 of 2006
----- Dated this the 27th day of January, 2015

JUDGMENT

Ramachandran Nair, J.

These appeals arise from the common judgment of the Motor Accidents Claims Tribunal, Thrissur in O.P.(MV) Nos.2643/2000, 2754/2000, 2756/2000, 2757/2000, 3130/2000, 3131/2000 and 3132/2000.

2. M.A.C.A.Nos.472/2006 and 494/2006 are against the awards in O.P.(MV)Nos.2757/2000 and 2643/2000 respectively.

3. In this case the accident occurred on 5.9.2000. The appellants as well as deceased Nelson and other parties were travelling in a Tata Sumo having registration No.KL8K8739 which hit against a lorry. Para.17 of the award shows the details of injuries sustained by the appellant in M.A.C.A No.472/2006 and the assessment of compensation. He has been working as a Sub Engineer in the Municipality. He sustained fracture on ribs, M.A.C.A Nos.472 and 494 of 2006 2 fracture collar bones, head injury and he lost 3 teeth. He was examined as PW7. He was aged 37 years at the time of the accident and was earning Rs.9,222/- per mensem. He was treated as an inpatient from 5.9.2000 to 25.9.2000. He has proved documents Exts.A48 to A56 series.

4. The learned counsel for the appellant submitted that compensation awarded is too low. He was on leave without allowance for 18 days and had taken 32 days' half pay leave from 24.9.2000 to 25.10.2000 and from 26.10.2000 to 4.12.2000 he was on leave without allowance. This is supported by Exts.A50 and A52. He has sustained 20% permanent disability.

5. The Tribunal has granted compensation in the following manner: Sl.No. Head of claim Amt. awarded 1 Loss of earnings Rs. 30,000.00 Medical expenses including

transport to Rs. 1,02,000.00 2 hospital and bystanders expense 3 Pain and suffering Rs. 12,000.00 4 Loss of amenities in life Rs. 10,000.00 5 Compensation for permanent disability Rs. 19,200.00 TOTAL Rs. 1,73,200.00 6. In the light of the evidence regarding the injuries M.A.C.A Nos.472 and 494 of 2006 3 sustained and the fact that he was under treatment as inpatient and outpatient for a considerable long period, we grant an amount of Rs.40,000/- towards pain and suffering. The disability sustained is to the tune of 20%. The learned counsel for the Insurance Company submitted that the appellant has not lost his job and there is no functional disability. Therefore, this Court will have to grant compensation towards permanent disability as well as loss of amenities in life. The evidence is that he cannot carry any weight and other difficulties are also there. We grant an amount of Rs.50,000/- towards permanent disability and Rs.40,000/- towards loss of enjoyment of life and loss of amenities in life.

7. We refix the compensation in the following manner: Sl.No. Head of claim Amt. awarded 1 Loss of earnings Rs. 30,000.00 Medical expenses including transport to Rs. 1,02,000.00 2 hospital and bystanders expense 3 Pain and suffering Rs. 40,000.00 4 Loss of enjoyment and amenities in life Rs. 40,000.00 5 Compensation for permanent disability Rs. 50,000.00 TOTAL Rs. 2,62,000.00 (Rupees Two lakhs sixty two thousand only) M.A.C.A Nos.472 and 494 of 2006 4 The appellant in M.A.C.A No.472/2006 will be entitled for a total compensation of Rs.2,62,000/- (Rupees Two lakhs sixty two thousand only). The enhanced amount will carry 9% interest per annum. 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 .

8. M.A.C.A No.472/2006 is allowed accordingly. No costs.

9. We also notice that the appeal has been filed with a petition for condoning the delay in filing the same. We clarify that for the period covered by the delay (301 days), the appellant will not be entitled for interest on the compensation amount. M.A.C.A No.494 of 2006 10. The appellant in M.A.C.A No.494/2006 is stated to be a Sub Engineer earning Rs.11,000/-. He had sustained head injury, fracture maxilla and fracture both bones of right hand and was examined as PW1. He was

aged 37 years at the time of the accident and was earning Rs.11,000/- per mensem. According to him, he was treated in West Fort Hospital, Thrissur and as a result of the injuries, the left side of his face become benumbed and he has difficulty in chewing food. There is also M.A.C.A Nos.472 and 494 of 2006 5 watering from left eye and he gets tired during his work. He was treated as an inpatient from 5.9.2000 to 19.9.2000 in the said hospital (15 days). He has sustained 10% permanent disability as per Ext.A7. Ext.A8 shows that he sustained 8% permanent disability and Ext.A9 shows his salary as Rs.9,072/-.

11. The Tribunal has granted compensation in the following manner: Sl.No. Head of claim Amt. awarded 1 Loss of earnings Rs. 10,000.00 Medical expenses including transport to Rs. 22,000.00 2 hospital and bystanders expense 3 Pain and suffering Rs. 12,000.00 4 Loss of amenities in life Rs. 10,000.00 Compensation for continuing permanent Rs. 9,600.00 5 disability TOTAL Rs. 63,600.00 12. The learned counsel for the appellant submitted that the disability has not been compensated properly and the amount awarded towards pain and suffering is too low. On other heads also, it is submitted that, he is entitled for reasonable amount.

13. We find that the appellant was treated as an inpatient for a period of 15 days. Therefore he will be entitled for an M.A.C.A Nos.472 and 494 of 2006 6 amount of Rs.3,000/- as bystander expenses @ Rs.200/- per day. For transportation also, he will be entitled for an amount of Rs.2,000/-. For medical expenses he will be entitled for the amount covered by Ext.A12 series, namely, Rs. 17,359.11 and we grant Rs.3,000/- towards physiotherapy treatment also.

14. As compensation for pain and suffering, we grant an amount of Rs.35,000/-, considering the various items of injuries and the period of treatment.

15. As far as disability is concerned, there are two types of disabilities going by Exts.A7 and A8. But the Tribunal has taken disability as 5% only and the reason for the same is not stated in the award. He was only aged 37 years at the time of the accident. The learned counsel for the Insurance Company submitted that this Court cannot apply the multiplier- multiplicand method here as he is still working and there is no loss of earning. In the light of the above fact, we will have to assess compensation for permanent disability and grant amount towards loss of

enjoyment of life and loss of amenities in life. The Tribunal has granted only Rs.9,600/- for permanent disability by taking the monthly income as Rs.1,000/- and adopting the multiplier 16. We grant an amount of Rs.40,000/- M.A.C.A Nos.472 and 494 of 2006 7 towards permanent disability and Rs.35,000/- towards loss of enjoyment of life and loss of amenities in life which will be just and fair.

16. Accordingly, we refix the compensation in the following manner: Sl.No. Head of claim Amt. awarded 1 Bystander's expenses Rs. 3,000.00 2 Transportation charges Rs. 2,000.00 3 Medical expenses Rs. 17,359.11 4 Expense for physiotherapy treatment Rs. 3,000.00 5 Pain and suffering Rs. 35,000.00 4 Loss of enjoyment and amenities in life Rs. 35,000.00 5 Compensation for permanent disability Rs. 40,000.00 TOTAL Rs. 1,35,359.11 round off to Rs. 1,35,360.00 (Rupees One lakh thirty five thousand three hundred and sixty only) The appellant in M.A.C.A No.494/2006 will be entitled for a total compensation of Rs.1,35,360/- (Rupees One lakh thirty five thousand three hundred and sixty only). The enhanced amount will carry 9% interest per annum. The Insurance Company is directed to deposit the entire amount of compensation within a period of three months, less the amount already deposited M.A.C.A Nos.472 and 494 of 2006 8 before the Tribunal .

17. M.A.C.A No.494/2006 is allowed accordingly. No costs. We also notice that the appeal has been filed with a petition for condoning the delay in filing the same. We clarify that for the period covered by the delay (305 days), the appellant will not be entitled for interest on the compensation amount. Sd/- T.R.RAMACHANDRAN NAIR Judge Sd/- P.V.ASHA Judge rtr/ /truecopy/ P.S to Judge

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