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Sathi Devi Vs. Managing Director,ksrtc

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Court : Kerala

Decided On : Feb-05-2015

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

Appellant : Sathi Devi

Respondent : Managing Director,ksrtc

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 THURSDAY, THE5H DAY OF FEBRUARY201516TH MAGHA, 1936 MACA.No. 1508 of 2011 ( ) ---------- AGAINST THE AWARD IN OPMV872004 of M.A.C.T., THALASSERY DATED1111-2010 APPELLANT:PETITIONER ---------- SATHI DEVI,AGED77YEARS, W/O.KUMARAN 'DEVIKA', NEAR AROLI HIGH SCHOOL, P.O.AROLI KANNUR DISTRICT. BY ADVS.SRI.M.V.AMARESAN SRI.K.REGHUNATHAN RESPONDENT:RESPONDENT NO.1 ---------- MANAGING DIRECTOR, KERALA STATE ROAD TRANPSORT CORPORATION THIRUVANANTPAURAM, PIN-695001 R BY SRI.BABU JOSEPH KURUVATHAZHA,SC,KSRTC SRI SRIPRAKASH.R.NAIR, SC, KSRTC THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON0502-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: T.R.RAMACHANDRAN NAIR & P.V ASHA, JJ.

---------- M.A.C.A No.1508 of 2011
---------- Dated this the 5th day of February, 2015

JUDGMENT

Ramachandran Nair, J.

The appellant, who was aged 71 years at the time of the accident, is aggrieved by the compensation awarded by the Tribunal. The accident occurred on 29.10.2003 while she was walking through the side of a road at Pallikkunnu. The offending vehicle is a K.S.R.T.C bus having registration No.KL153085, which knocked down her. As she sustained serious injuries, she was admitted in Koyili Hospital, Kannur and was then referred to City Hospital, Mangalore for better treatment.

2. The learned counsel for the appellant submitted that the accident has resulted in quadriparesis,whereby she is now affected by partial paralysis because of the injury caused to spinal cord. It is submitted that she is practically laid up and is advised only wheelchair life by the doctor. Therefore the learned counsel for the appellant submitted that in the light of the disability certificate issued by the doctor by assessing the disability at 75%, she is entitled for adequate compensation. It is M.A.C.A No.1508 of 2011 2 also submitted that for loss of enjoyment of life and loss of amenities, no amount has been granted and the amounts granted towards transportation expenses, bystander's expenses, pain and suffering etc. also require modification.

3. We find from the wound certificate that she sustained very serious injuries. Ext.A4 discharge summary will show that traumatic cervical myelopathy (above C5) with quadriparesis (ULLL) is the diagnosis recorded. She was hospitalised initially for 4 days in Koyili Hospital, Kannur from 29.10.2003 to 02.11.2003. She was again treated for 18 days from 3.11.2003 to 20.11.2003, in the City Hospital, Mangalore. In the discharge summary it is stated that MRI Scan cervical spine shows cord edema. The treatment given therein includes Head Halter traction with 2.5 kg weight, mobilization with hard cervical collar, upper limb and lower limb mobilization and walker walking. She was advised to continue upper and lower limb mobilization and walker walking.

4. In the disability certificate issued by the doctor dated 31.08.2009, what is stated is paralysis of all 4 limbs - grade 3/5 power in lower limbs and grade 4/5 power - upper limbs. The patient is limited to wheelchair. He has also reported loss of M.A.C.A No.1508 of 2011 3 vision in left eye (50% of vision) and the percentage of whole body disability is assessed at 75%.

5. Considering the age of the appellant, Rs.2,500/- is taken as the notional income for fixing the compensation.

6. We find that the Tribunal has granted compensation going by the table below at a total amount of Rs.1,44,600/-. Sl.No. Head of claim Amt.awarded 1 Loss of earning Rs. 7,500.00 2 Medical and miscellaneous expenses Rs. 31,500.00 3 Bystander expenses Rs. 2,200.00 4 Transportation expenses Rs. 3,000.00 5 Extra nourishment Rs. 3,000.00 6 Pain and suffering Rs. 18,000.00 7 Disability Income Rs. 75,000.00 8 Bystanders expenses (Fee for home nurse) Rs. 2,400.00 9 Any other heads Rs. 2,000.00 Total Rs. 1,44,600.00 7. For bystander expenses, we enhance the amount to Rs.4,500/- for the inpatient period of 22 days. As regards the transportation expenses are concerned, it is seen that she was treated in Mangalore also. Therefore we grant a total amount of Rs.5,000/- towards transportation expenses. The next item is pain and suffering. The injuries were very serious and she was M.A.C.A No.1508 of 2011 4 practically suffering from the partial paralysis. During the period of treatment also various treatment procedures have been undertaken and she had to undergo walker walking and even after discharge, the same was directed to be continued. Therefore, a reasonable compensation ought to have been granted towards pain and suffering and we enhance the same to Rs.40,000/-. Much arguments have been raised with regard to the disability compensation. What has been done by the Tribunal is to assess 50% disability instead of 75%, which is under attack by the learned counsel for the appellant. The learned counsel for the K.S.R.T.C submitted that since she was aged 71 years, there is no question of granting compensation for loss of earning power at that age and there is no such assessment by the medical board also. It is therefore submitted that the income based assessment of loss of earning capacity may not be a factor, in view of the facts of this case.

8. The occupation claimed is that of a coolie worker. Admittedly she was aged 71 years at the time of the accident. Going by the physical disability, now she is completely confined to wheelchair life. She is affected by paralysis and other adverse circumstances also. Therefore it will be safe to adopt a method M.A.C.A No.1508 of 2011 5 by which she is compensated for permanent disability and she is granted further amount towards loss of enjoyment of life and loss of amenities of life. In that view of the matter, for the permanent disability suffered we will have to award adequate compensation. The amount granted by the Tribunal is Rs.75,000/- towards permanent disability, which we enhance to Rs.1 lakh. We also grant another amount of Rs.50,000/- towards loss of enjoyment of life and loss of amenities in life, since she is unable to pursue her normal avocation in her life; she will not be able to travel and even walk freely and cannot do household duties.

9. The learned counsel for the appellant further submitted that the treatments will have to be continued and for future treatment, no amount has been awarded by the Tribunal. It is seen from the discharge certificate that she is advised to continue upper and lower limb mobilisation. It is clear that she will have to adopt a wheelchair life and this will add to her health problems and therefore she may have to continue treatment for various ailments, connected with it. Therefore we award an amount of Rs.15,000/- towards future treatment also. Accordingly we modify the award as follows: M.A.C.A No.1508 of 2011 6 Sl.No. Head of claim Amt.awarded 1 Loss of earning Rs. 7,500.00 2 Medical and miscellaneous expenses Rs. 31,500.00 3 Bystander expenses Rs. 4,500.00 4 Transportation expenses Rs. 5,000.00 5 Extra nourishment Rs. 3,000.00 6 Pain and suffering Rs. 40,000.00 7 Disability Income Rs. 1,00,000.00 8 Bystanders expenses (Fee for home nurse) Rs. 2,400.00 Loss of amenities in life and enjoyment of Rs. 50,000.00 9 life 10 Future treatment Rs. 15,000.00 Total Rs. 2,58,900.00 (Rupees Two lakhs fifty eight thousand and nine hundred only) The appellant will be entitled to a total compensation of Rs.2,58,900/- (Rupees Two lakhs fifty eight thousand and nine hundred only). The enhanced amount will carry interest @9% per annum from the date of petition.

10. As we have already awarded compensation in all the relevant heads, we delete the amount granted by the Tribunal as item No.16 in the award.

11. The appellant will pay court fee based on the amount awarded by this Court (balance after reckoning the court fee already remitted). The same will be recovered by the Tribunal from the amount to be deposited by the K.S.R.T.C. There will be M.A.C.A No.1508 of 2011 7 a direction to the K.S.R.T.C to deposit the amount within five months and on such deposit being made, the appellant can withdraw the amount. The appeal is accordingly allowed. No costs. Sd/- T.R.RAMACHANDRAN NAIR Judge Sd/- P.V.ASHA Judge rtr/ /true copy/ P.S to Judge

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