

Sasikumar Vs. Shaju Mon

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Court : Kerala

Decided On : Feb-02-2015

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

Appellant : Sasikumar

Respondent : Shaju Mon

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, THE 2D DAY OF FEBRUARY 2015 13TH MAGHA, 1936 MACA.No. 564 of 2013 () ----- AGAINST THE AWARD IN OPMV11812006 of MOTOR ACCIDENTS CLAIMS TRIBUNAL, THRISSUR DATED 05-11-2012 APPELLANT/PETITIONER ----- SASIKUMAR S/O RAGHAVAN KADUPIDY VALAPPIL HOUSE PERUMBILLISSERY, THRISSUR BY ADVS.SRI.V.BINOY RAM SMT.SAJITHA P.SOMAN RESPONDENTS/RESPONDENTS ----- 1. SHAJU MON S/O VELAYUDHAN VADAKKEKANARA HOUSE THOZHUVANUR P.O. MALAPPURAM, KERALA PIN 676505 2. ABHILASH P., S/O P.UNNIKRISHNAN PERIYETT HOUSE POONGOTT DESOM, VELLEYPUR MALAPPURAM, KERALA PIN 676505 3. THE MANAGER, THE NEW INDIA ASSURANCE CO. LTD., BRANCH OFFICE K.K.BUILDING, THAZHEPPALAM TIRUR, PIN 676101 R3 BY ADV. SRI.KKM.SHERIF THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 02-02-2015, THE COURT ON THE SAME DAY

DELIVERED THE FOLLOWING: T.R.RAMACHANDRAN NAIR & P.V.ASHA, JJ.

----- M.A.C.A.No.564 OF2013- -----

----- Dated this the 2nd day of February, 2015

JUDGMENT

Ramachandran Nair, J.

The claimant who was involved in an accident is the appellant before this Court. As against the claim of ` 7 lakhs as compensation, the Tribunal has awarded ` 2,69,350/-.

2. The accident occurred on 11.4.2006 at about 3.30 p.m. . He was travelling along with the claimant in O.P.(MV)No.1182/2006 in a motor cycle bearing Reg.No.KL8F-7192 through Perumbillissery- Poochunnipadam road. At a place called Thiruvullakavu, the offending vehicle namely Tata Sumo bearing Reg.No.KL-10G9210 which was coming from the opposite side over took a bus and hit on the motor cycle. Both of them were thrown out of the motor cycle and sustained serious injuries. They were admitted in the Elite Mission Hospital as inpatients. Both the cases were disposed of together. MACA No.564/2013 2 3. As far as the case of the appellant is concerned, the learned counsel for the appellant submits that he was aged 35 years at the time of the accident and was working as a goldsmith. He was treated as an inpatient continuously for 57 days and had to attend several reviews. Even though he claimed loss of earnings for four years, the Tribunal has granted only for 12 months. It is also submitted that the income, even though claimed on a monthly basis at Rs.5,000/-, which is reasonable, only Rs.3,000/- was accepted by the Tribunal. He has sustained various disabilities which have been noted in the judgment and the observations made by the Tribunal after noticing him when he appeared have also been recorded in the award. It is submitted that in spite of the same, meagre amounts have been granted towards permanent disability, disfiguration, pain and suffering, loss of amenities and transportation.

4. The award shows that amounts have been awarded under different heads in the following manner by the Tribunal. MACA No.564/2013 3 Head of claim Amount

Awarded in rupees Loss of earning 36000 Medical and miscellaneous expenses 105848 Bystander expenses 11400 Transportation expenses 5000 Pain and suffering 30000 Disability etc. 46080 Loss of amenities 20000 Disfiguration 15000 Total 269328 Rounded to 269350

5. The appellant sustained the following injuries

- 1) Head injury -cerebral concussion
- 2) Communitted fracture of both bones right leg
- 3) Lacerated wound right heel
- 4) Scalp injury
- 5) Contusion (R) shoulder

6. Exts.A10 and A11 discharge summaries show that ORIF with IL nailing for tibia was done. When he was re-admitted , SA tibial nail was removed by a surgery. MACA No.564/2013 4

7. The details of the treatment shows that after he was discharged on 23.5. 2006, he was admitted on 31.1.2008 with infection in nail. He was treated by removal of I.L. Nail and was discharged on 5.2.2008. He was admitted on 14.7.2008 with osteomyelitis in right tibia and was discharged on 30.7.2008. Again he was admitted on 4.11.2008 in Metropolitan Hospital with infection. He was treated by fibilectomy, refreshing of fracture edge of right tibia and phemister bone grafting. He was discharged on 20.11.2008. He was again admitted on 18.2.2009 for further treatment and management. He had undergone physiotherapy. Finally he was discharged on 20.2.2009.

8. The disability certificate shows that he had pain in right leg and stiffness of right knee and ankle. On examination - clinically and radiologically, the disabilities have been noted in the disability certificate in the following manner :

1. He has 1.8 cm. Shortening in right leg

2. He has united fracture of right tibia, fibilitomy of 2 cm, done to facilitate tibial union.

3. He has stiffness of right ankle. MACA No.564/2013 5

9. It shows that he has got 1.8cm. shortening in right leg and he has got stiffness in right ankle. The permanent disability for the whole body was assessed at 8% as per M.C. Bride scale.

10. As regards the monthly income assessed by the Tribunal, we are of the view that the amount claimed by the appellant was reasonable being Rs.5,000/- per month. He is a skilled worker and has been working as a gold smith. The accident occurred in the year 2006. Therefore even if no documentary evidence was available, since the claim made being reasonable, it could have been accepted by

the Tribunal and we adopt Rs.5,000/- as the monthly income for assessing the disability. Accordingly the disability compensation will be Rs.76,800/- (5000 x 12 x 16 x 8%). As far as the partial loss of earnings is concerned, the Tribunal has awarded amount for one year @ Rs.3,000/- which we vary and he will be entitled to Rs.60,000/-. For transportation expenses, Rs.5,000/- was claimed and the entire amount has been awarded. We find from the details that he was treated on different occasions in the hospital as noted already. Since the total amount of claim is Rs.7 lakhs, there is no embargo in awarding a MACA No.564/2013 6 reasonable amount under the said head. It is evident that he had been in the hospital on different occasions. Therefore we award a sum of Rs. 8,000/- towards transportation charges.

11. As far as pain and suffering is concerned, the Tribunal has awarded Rs.30,000/-. It is a case where he had sustained serious injuries and had to undergo four surgeries. It is clear that he had been in and out of different hospitals for different periods. The assessment of pain and suffering therefore according to us is much on a lesser side and we award a sum of Rs.50,000/- in total for pain and suffering.

12. The next aspect is the amount awarded towards loss of amenities. The details will show that he has got shortening of leg, removal of bone and communion of fracture. The Tribunal has noted that there were implants on his leg and there was numbness on his fingers. He was having difficulty in the hip portion and huge scar is also noticed. He had complained of pain and that he was unable to work properly. It is clear that he will not be able to pursue his normal avocations in personal life as well as in the work place as before and he will have to adjust to the effect of the injuries on his body while doing MACA No.564/2013 7 his work and pursuing his normal avocations in life. In that view of the matter, we award a sum of 50,000/- towards loss of amenities and enjoyment of life and shortened expectation of life. For disfiguration, we enhance the amount to Rs.25,000/-.

13. Accordingly, the compensation is re-computed in the following manner : Head of claim Amount Awarded in rupees Loss of earning 60000 Medical and miscellaneous expenses 105848 Bystander expenses 11400 Transportation

expenses 8000 Pain and suffering 50000 Disability etc. 76800 Loss of amenities 50000 Disfiguration 25000 Total 387048 Rounded off to `3,87,000/- (Rupees three lakhs eighty seven thousand only) 14. The appellant will be entitled to interest @ 9% per annum from the date of petition for the enhanced compensation. The MACA No.564/2013 8 Insurance Company shall deposit the amount less the amount already deposited within a period of three months from the date of receipt of a copy of this judgment. The appeal is accordingly allowed. No costs. T.R.RAMACHANDRAN NAIR, JUDGE P.V.ASHA, JUDGE sv.

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