

Kuttappan Vs. Paul Clement and Another

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Court : Kerala

Decided On : Feb-25-2015

Judge : Honourable Mr.Justice K.Vinod Chandran

Appellant : Kuttappan

Respondent : Paul Clement and Another

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 WEDNESDAY, THE 25TH DAY OF FEBRUARY 2015 6TH PHALGUNA, 1936 MACA.No. 1376 of 2007 ()
----- AGAINST THE AWARD IN OPMV1502002 of ADDL.M.A.C.T., KOTTAYAM DATED 2011-2006 APPELLANT/PETITIONER::
----- KUTTAPPAN, S/O. PAPPU, THEKKEPARAMBIL HOUSE, IRAVIMANGALAM KARA MANJOOR VILLAGE, KOTTAYAM. BY ADVS.SRI.T.K.KOSHY SRI.T.A.RAJAN RESPONDENTS/RESPONDENT 2 & 3::
----- 1. PAUL CLEMENT, S/O. CLEMENT, 20/2251, EDAKOCHI, ERNAKULAM DISTRICT.

2. THE NEW INDIA ASSURANCE CO. LTD., THOPPUMPADY. (NO RELIEF IS CLAIMED AGAINST R1 BEFORE THE COURT BELOW AND HENCE HE IS NOT ARRAYED AS A RESPONDENT IN THE APPEAL). R2 BY ADV.

SRI.P.G.GANAPPAN THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 25-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: T.R.RAMACHANDRAN NAIR & P.V.ASHA, JJ.

----- M.A.C.A.No.1376 OF2007-----
----- Dated this the 25th day of February, 2015

JUDGMENT

Ramachandran Nair, J.

This appeal is filed by the claimant aggrieved by the inadequacy of the compensation awarded in O.P.(MV)No. 150/2002 of the Additional MACT, Kottayam. The accident occurred on 7.10.2001 while the appellant was riding a bicycle through Vaikom- Kottayam road . The offending vehicle is a scooter bearing Reg.No. KL7 2441 which hit the vehicle and the appellant fell down on the road and sustained severe injuries.

2. A total amount of ` 4 lakhs was claimed as compensation. The Tribunal found that the accident occurred due to the negligence of the rider of the scooter.

3. The appellant was aged 48 years at the time of the accident and he was a carpenter as well as newspaper agent. According to him he was getting a monthly income of `8,000/-. To prove the monthly MACA No.1376/2007 2 income, he has produced Ext.A11 bill issued from Mathrubhumi Printing and Publishing Company Ltd. for the month of October 2001. Going by the same, he was getting a trade discount of `2,159.07. Another bill for the period of November 2011 was also produced, where the amount is shown as `2,220.98.

4. To prove that he was an Artisan, Ext.A10 issued by the District Executive Officer, Kerala Artisans and Skilled Workers (Death cum retirement benefit scheme) was produced. He contended that he was getting 20 days work in a month. The Tribunal finally fixed the amount at `4,600/- by taking `2,500/- from his work as carpenter and `2,100/- as distributor of newspaper.

5. The learned counsel for the appellant submits that the monthly income taken is at a too low rate as carpenters are skilled workers and the appellant will be getting more income.

6. The learned counsel for the Insurance Company submits that the accident is of the year 2001 and therefore the amount arrived at by the Tribunal is a reasonable one.

7. Considering the various aspects, we fix the monthly income MACA No.1376/2007 3 of the appellant at `5,600/-. As far as the injuries are concerned, he sustained closed fracture shaft of femur left, black eye bilateral and head injury and loose teeth. Ext.A5 is a certificate issued by Department of Oral and Maxillofacial Surgery, M.C.H. Kottayam, which shows that he had sustained head injury, fracture maxilla right side, fracture zygomatic arch right side, fracture shaft of femur bone, lacerated wound upper lip (3 x 1 x 1 cm.), lacerated wound lower lip (2 x 1 x 1), Grade II mobility with Dento alveolar fracture of right upper incisor teeth, canine and 1st premolar. Lower right and left central incisor teeth, left lower lateral incisor teeth. Grade II mobility with extensive bone loss of right upper 1st molar and left upper lateral incisor tooth. Various treatment details have also been furnished in Ext.A5. It shows that 9 teeth were extracted and head injury was managed by neurosurgeon and fracture femur bone was managed by the orthopaedic surgeon. He was advised complete bed rest for six weeks and during this period he should take only liquid diet. He was admitted in Medical College hospital, Kottayam on 7.10.2001 and was discharged on 30.10.2001. Ext.A7 is the treatment certificate issued MACA No.1376/2007 4 from the Department of Orthopaedic, Medical College Hospital, Kottayam. He was treated by upper libial skeletal traction followed by K nailing on 22.10.2001. The disability assessed going by Ext.X1 disability certificate is 19.2% issued by the Medical Board of Medical College. But on the ground that it has not been proved as required by law, the said percentage was not accepted and the Tribunal refixed the same to 12%. It is under attack by the learned counsel for the appellant. We also are of the view that since Ext.X1 shows the correct disability factor, that too issued by a competent Medical Board, the same could have been accepted.

8. Towards the compensation, the following amounts have been awarded by the Tribunal : Head of claim Amount Awarded in rupees Pain and suffering 25000 Loss of earning 18400 Damage to clothing 500 Transportation 2000 Medical expenses 2500 Bystander's expenses 3000 MACA No.1376/2007 5 Head of claim Amount Awarded in rupees Extra nourishment 2000 Permanent disability 86112 Loss of amenities 20000 For fixing teeth 10000 Total 169512 9. The learned counsel for the appellant sought for higher enhancement for pain and suffering, partial loss of earnings, transportation, bystander's expenses, extra nourishment, permanent disability and loss of amenities.

10. Considering the treatment period and the treatment procedures undertaken by him, we fix an amount of `35,000/- towards pain and suffering. As far as the disability is concerned, the amount will be `1,67,731(5600 x 12 x 13 x 19.2%). We enhance the amount towards extra nourishment to `3,000/-. The vehement argument raised is regarding enhancement towards loss of amenities and loss of 9 teeth. The learned counsel for the Insurance Company submitted that `10,000/- has been granted for fixing the teeth. Apart from the same, there is partial ankylosis in the right knee. Therefore MACA No.1376/2007 6 for loss of inconvenience and loss of amenities, we further grant an amount of `10,000/-. Towards partial loss of earnings, `22,400/- (5600 x 4) is granted.

11. Accordingly, the compensation is refixed in the following manner : Head of claim Amount Awarded in rupees Pain and suffering 35000 Loss of earning 22400 Damage to clothing 500 Transportation 2000 Medical expenses 2500 Bystander's expenses 3000 Extra nourishment 3000 Permanent disability 167731 Loss of amenities 30000 For fixing teeth 10000 Total 276131 Rounded off to `276130/- (Rupees two lakhs seventy six thousand one hundred thirty only) 12. The enhanced amount will carry interest @ 9% per annum MACA No.1376/2007 7 from the date of petition. There will be direction to the Insurance Company to 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. On such deposit being made, the entire amount can be withdrawn by the claimant. The appeal is accordingly allowed. The parties will bear their costs in the appeal. T.R.RAMACHANDRAN NAIR, JUDGE P.V.ASHA, JUDGE sv. MACA

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