

Jessy Alexander Vs. Kandasamy and Others

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Court : Kerala

Decided On : Mar-10-2015

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

Appellant : Jessy Alexander

Respondent : Kandasamy and Others

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,THE10H DAY OF MARCH201519TH PHALGUNA, 1936 MACA.No. 1672 of 2010 ()
----- AGAINST THE AWARD IN OPMV612005 of ADDITIONAL MOTOR ACCIDENTS CLAIMS TRIBUNAL, ERNAKULAM DATED1703-2010
APPELLANT(S)/CLAIMANT: ----- JESSY ALEXANDER, W/O V.P.ALEXANDER, AGED55YEARS, PLOT NO.89 KUMARANASSAN NAGAR, KOCHI-20. BY ADVS.SRI.SHAJI P.CHALY SMT.H.ROSHNI
RESPONDENT(S)/RESPONDENTS:
----- * 1. KANDASAMY,AGED51YEARS, S/O SENKODA GOUNDER, VELAGOUNDAM PALAYAM, NAMAKAL. (DELETED)
*[RESPONDENT NO. 1 IS DELETED FROM THE PARTY ARRAY, AT THE RISK OF THE APPELLANT,VIDE

ORDER

DTD. 02.12.2013 IN I.A. 3206/2013] 2. P.N.PALANIAPPAN, AGED 55 YEARS, S/O NALLAIYA GOUNDER, RENGASWAMY PILLAI, ST. NO.3 TIRUCHANGODE. 637211 3. UNITED INDIA INSURANCE COMPANY LTD., 146 H, KUMAR COMPLEX, TIRUCHENGODU TAMILNADU, REPRESENTED BY ITS DIVISIONAL MANAGER ERNAKULAM.

4. NATIONAL INSURANCE COMPANY LTD., COCHING DIVISIONAL OFFICE, AJAY VIHAR, IST FLOOR P.B.NO.1715, M.G.ROAD, ERNAKULAM REPRESENTED BY ITS, DIVISIONAL MANAGER, ERNAKULAM. R4 BY ADV. SMT.SARAH SALVY THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 1003-2015, ALONG WITH MACA. 1735/2010, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: ds T.R.RAMACHANDRAN NAIR & P.V.ASHA, JJ.

----- M.A.C.A.Nos.1672 & 1735
OF 2010----- Dated this the 10th day of March, 2015

JUDGMENT

~~~~~ T.R.Ramachandran Nair, J.

The appeals have been filed by the respective claimants and the appellant in M.A.C.A.No.1672 of 2010 is the wife of the appellant in M.A.C.A.No.1735 of 2010. Both of them had claimed compensation for personal injuries suffered in an accident which occurred on 4.11.2002 at Dharmapuri. They were travelling in a Maruthi Esteem car bearing Reg.No.K-7/AC.5087 from Bangalore to Ernakulam. While they were crossing the Devaresam Patti Junction Road, the offending vehicle, a lorry bearing Reg. No.TN-28/U.4449, which was coming from Salem hit against the maruthi car and both of them sustained injuries.

2. The appellant in M.A.C.A.No.1672 of 2010 was awarded an amount of Rs.56,150/- with interest at 8% per annum as against the claim of Rs.1,46,000/-. The appellant in M.A.C.A.Nos.1672 & 1735/2010 2 M.A.C.A.No.1735 of 2010 was granted an amount of Rs.49,550/- with interest at the same rate.

3. We proceed to consider the grievances in both the appeals together. First we will consider the claim of the appellant wife in M.A.C.A.No.1672 of 2010. Evidence was let in by producing the medical records and other relevant records regarding the accident. Going by Ext.A5, she sustained the following injuries: Abrasion 4x2 cm on the left shoulder to front of chest, abrasion 4x6 cm left wrist, abrasion of 6x5 cm right wrist, abrasion on right leg and complaint of pain on chest. But on examination, it is found that she sustained some fracture and Ext.A11 is the case summary and discharge record. In the final diagnosis it is noted as bilateral distal radius and 1st rib fracture left and 2nd rib fracture right. Closed reduction and internal fixation with 'K' wires on left side and closed reduction and plaster cast application on right side was performed. She was admitted on 5.11.2002 in the hospital and discharged on 8.11.2002. The X-ray of right and left forearm showed bilateral distal radius fracture, 1st rib left and 2nd rib right fracture. She M.A.C.A.Nos.1672 &1735/2010 3 was also diagnosed to have bilateral distal radius fracture with rib fracture on left and right side. Removal of K wire on left side was after three weeks from the date of surgery and reapplication of cast. On review in Ortho for 'K' wire, it was removed after three weeks.

4. The Tribunal has granted compensation under various heads in the light of the injuries sustained. The learned counsel for the appellant submitted that the Tribunal ought to have granted more amounts in the light of the injuries sustained, period of treatment and the disabilities sustained. As per the certificate of the Medical Board, she is having a permanent disability of 5%. It is submitted that she was engaged in making bakery products at home and selling it. The Tribunal has considered Rs.2,000/- as notional income for calculating the percentage of disability. She was aged 46 at the time of accident and therefore, the multiplier as per the judgment of the Apex Court in Sarala Verma v. Delhi Transport Corporation [2010 (2) KLT802 will be 13. For the purpose of assessing compensation, we find it reasonable to take the monthly income M.A.C.A.Nos.1672 &1735/2010 4 as Rs.3,000/- and therefore, the disability compensation will be  $3000 \times 12 \times 5 / 100 \times 13 = \text{Rs.}23,400/-$ . The Tribunal has granted only Rs.3,000/- towards loss of amenities which we enhance to Rs.10,000/-. As far as pain and suffering also, after considering various aspects it is seen that she has undergone various treatment procedures which had resulted in lot of

inconvenience to her. Even going by the discussion made by the Tribunal, surgery was conducted and 'K' wire fixation was made and plaster cast also was there. Therefore, it is clear that she would have suffered much pain and suffering during the period. There were wrist fractures of both hand and that of the ribs. Therefore, we award an amount of Rs.40,000/- towards pain and suffering. For bystander's expenses, the Tribunal has granted Rs.2,000/- which we enhance to Rs.4,000/-. For loss of earning, the Tribunal has awarded only a sum of Rs.6,000/-, which we enhance to Rs.9,000/-. Accordingly, we recompute the compensation in the following manner.

| M.A.C.A.Nos.1672 | &1735/2010 | 5 | Head                 | Amount awarded by Tribunal | Amount modified |
|------------------|------------|---|----------------------|----------------------------|-----------------|
|                  |            |   | Permanent disability | 14400                      | 23400           |
|                  |            |   | Loss of amenities    | 3000                       | 10000           |
|                  |            |   | Pain and suffering   | 26000                      | 40000           |
|                  |            |   | Bystander expense    | 2000                       | 4000            |
|                  |            |   | Transportation       | 4000                       | 4000            |
|                  |            |   | Loss of earnings     | 6000                       | 9000            |
|                  |            |   | Damage to clothing   | 750                        | 750             |
|                  |            |   | Total                | 56150/-                    | 91,150/-        |

Therefore, the total compensation will be Rupees Ninety one thousand one hundred and fifty only. It will carry interest at the rate of 9% per annum for the enhanced compensation.

5. As far as M.A.C.A.No.1735 of 2010 is concerned, the appellant was not treated as inpatient in any hospital. The injuries noted in Ext.A3, copy of the wound certificate, are 2x4cm abrasion on index finger, 4x3 cm on neck, 4 x 4 cm on the left chest, 2x2 cm on left leg 3x4 cm on right chest, 2x2 cm on right knee and 4x3 cm on right thigh.

6. He was advised to take X-ray of spine and left hand and Ortho consultation was also advised. He attended the Radiology department of Medical College Hospital in Bangalore. M.A.C.A.Nos.1672 &1735/2010 6 There was fracture spinous process of C2, Osteophytes at C5, 6 with decreased IV disc space. The appellant had produced a medical certificate issued by the Medical Board stating that his permanent disability is 11% as per MC Bride scale.

7. Learned counsel for the appellant submitted that he had retired as Wing Commander from Indian Army and was engaging himself as a qualified surveyor. It is submitted by the learned counsel for the respondent that there is no evidence to prove the same.

8. We find from the discussion of evidence that the Tribunal has arrived at Rs.3,000/- as the monthly income. Of course, he will be a pensioner pursuant to his retirement. But even then, going by the personal avocations undertaken by him he would have been earning money. We are of the view that an amount of Rs.4,000/- can be taken as the monthly income notionally for the purpose of quantifying the amount towards permanent disability. M.A.C.A.Nos.1672 &1735/2010 7 9. Learned counsel for the appellant submitted that for loss of earning power nothing has been granted by the Tribunal. Of course, the said claim requires a proper certificate by the Medical Board which is absent. In the light of the fact that he had sustained permanent disability, this Court will be justified in granting amount towards disability sustained; for pain and suffering as well as for the loss of amenities and loss of enjoyment of life rather than granting amount towards loss of earning power. Since he had retired from service and was aged 55 at the time of accident, the multiplier will be 11 as per the judgment of the Apex Court in Sarala Verma v. Delhi Transport Corporation [2010(2) KLT802.

10. The Tribunal has granted compensation under various heads in the light of the injuries sustained. For the disability sustained by him the Tribunal has granted an amount of Rs.28,800/-. On recomputation, he will be entitled for Rs.52,800/- under the head of disability. For loss of earnings, the Tribunal has granted Rs.3,000/- which we enhance to Rs.4000/-. It is seen that the injuries have resulted in 11% permanent disability. M.A.C.A.Nos.1672 &1735/2010 8 Naturally, it will result in loss of amenities and loss of enjoyment of life. Therefore, we grant an amount of Rs.15,000/- towards loss of amenities and loss of enjoyment of life. As far as pain and suffering is concerned, the Tribunal has granted Rs.10,000/-. In the light of the particular nature of the injuries sustained by him, we grant an amount of Rs.15,000/- towards pain and suffering. Accordingly, we recompute the compensation in the following manner.

| Head                    | Amount awarded by Tribunal | Modified Amount |
|-------------------------|----------------------------|-----------------|
| Permanent disability    | 28800                      | 52800           |
| Loss of earnings        | 3000                       | 4000            |
| Loss of amenities       | 3000                       | 15000           |
| Pain and suffering      | 10000                      | 15000           |
| Damage to clothing      | 750                        | 750             |
| Transportation expenses | 4000                       | 4000            |
| Total                   | 49550/-                    | 91,550/-        |

(Rupees Ninety one thousand five hundred and fifty only) Therefore, the total compensation will be Rupees Ninety one thousand five hundred and fifty only. It will carry interest at the rate of 9% per annum for the enhanced compensation.

The Insurance Company will deposit the modified amount, less M.A.C.A.Nos.1672 &1735/2010 9 amount, if any, already deposited as per the award impugned, within three months from the date of receipt of a copy of this judgment. Appeals are allowed accordingly and the parties will suffer their costs. sd/- T.R.RAMACHANDRAN NAIR, JUDGE. sd/- P.V.ASHA, JUDGE. Ps/11/3/2015

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