

Omana Vs. Alex v.Chacko and Another

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Court : Kerala

Decided On : Mar-11-2015

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

Appellant : Omana

Respondent : Alex v.Chacko 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 11TH DAY OF MARCH 2015 20TH PHALGUNA, 1936 MACA.No. 1148 of 2008 ()
----- AGAINST THE AWARD IN OPMV17022003 of M.A.C.T.,KOTTAYAM DATED 06-03-2007 APPELLANT: PETITIONER
----- OMANA, PUTHENPARAMBU HOUSE, CHEMBUKARA, CHEMBU VILLAGE, VAIKOM. BY ADVS.SRI.T.K.KOSHY SRI.T.A.RAJAN
RESPONDENT(S): RESPONDENTS 2 & 3 ----- 1. ALEX-V-CHACKO, VELLAPPALLIMATATHIL HOUSE, PERUR P.O.

2. THE NATIONAL INSURANCE CO.LTD., DIVISIONAL OFFICE, KOTTAYAM. R,R2 BY ADV. SRI.RAJAN P.KALIYATH THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 11-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: T.R.RAMACHANDRAN NAIR & P.V ASHA, JJ.

JUDGMENT

Asha, J.

The appellant met with an accident on 04.10.2003 at Ceylon Kavala, near Vaikom. She was hit by a mini lorry. She sustained injuries and was taken to the hospital. After undergoing treatment, she filed the claim petition seeking compensation to the tune of Rs.2 lakhs. The Tribunal awarded a sum of Rs.75,340/-. This appeal is filed seeking enhancement in compensation.

2. We heard the learned counsel appearing on either side. The learned counsel for the Insurance Company opposed the claim for enhancement.

3. The learned counsel for the appellant submits that the amount awarded under various heads are thoroughly inadequate and the income reckoned in the case of the appellant is too low and that no amount is awarded towards permanent disability, disfiguration etc.

4. Before the Tribunal the appellant adduced M.A.C.A No.1148/08 2 documentary evidence based on Exts.A1 to A14 documents. The disability certificate Ext.C1 was also before the Tribunal.

5. The appellant is a fish vendor and she claimed that she was earning a sum of Rs.4,000/- per mensem. She was aged 45 years at the time of the accident. She was admitted in the Medical College Hospital, Kottayam. Ext.A3 wound certificate records her injuries as follows: "abrasion left knee and upper part of left chin, lacerated wound 10X8cm involving the right temporal . medial and . zygomatical region with extension of tissue loss, fracture maxilla, fracture lateral medial and inferior border of orbital cavity, fracture nasal bone and contusion right eye ball." 6. She underwent inpatient treatment for the period from 04.10.2003 to 17.10.2003. She sustained fracture of right zygoma, maxillary right orbital wall, vertical translation (L) hemipelvis, fracture superior and inferior pubic ramus. Treatment included fixation of zygoma and soft tissue repair of face and skeletal traction for

upper tibial bone. Subsequent to the discharge from the hospital, she had to undertake review on 28.10.03, 5.11.03, 12.11.03, 22.11.03, 27.12.03, 6.3.04, 1.5.04, 12.6.04, 8.9.05, 9.9.05 and 14.1.06. She had to undertake M.A.C.A No.1148/08 3 several visits to the hospital on account of continued treatment. Even after the prolonged treatment, the disability certificate Ext.C1 issued by the Medical Board shows that she incurred permanent partial disability of 14% in the category mild on account of the facial fracture, malocclusion teeth and facial disfigurement.

7. The Tribunal awarded a sum of Rs.5,340/- towards transportation. It is seen that the appellant had to undertake several visits during the period 2003 to 2006 almost continuously to the Medical College Hospital, Kottayam. Therefore we enhance the amount awarded under the head transportation to Rs.7,500/-. The Tribunal awarded a sum of Rs.5,000/- towards loss of earning. In view of the fact that the appellant was engaged in fish vending, we fix the monthly income @ Rs.3,000/- per mensem. Therefore she will be entitled to a sum of Rs.18,000/- towards loss of earnings for a period of six months as it is seen that she was continuing on treatment from the year 2003 to 2006. It is seen that the appellant was undergoing inpatient treatment for a period of 15 days and for the bystander's expenses, the Tribunal has awarded only a sum of Rs.1,500/-. As the treatment undergone was in the year 2003, M.A.C.A No.1148/08 4 we enhance the same to Rs.3,000/- (ie.@ Rs.200/- per day for 15 days). Having regard to the discomfort and inconvenience she had to suffer on account of the very severe injuries sustained and the prolonged treatment undergone, we enhance the compensation under the head 'pain and sufferings' to Rs.25,000/-. The disability certificate itself shows that the appellant had incurred 14% disability on account of disfiguration as well as facial fracture, which has substantially affected the quality of enjoyment of life of the appellant also. Therefore, we award Rs.15,000/- towards loss of amenities of life and loss of enjoyment of life and Rs.15,000/- towards disfiguration. The Tribunal has not awarded any amount under the head 'permanent disability' separately. Since the appellant was aged 45 years and the percentage of disability is 14, we award a sum of Rs.75,600/- (ie. $Rs.3000 \times 12 \times 14 \times 14 / 100$) towards permanent disability. Thus the award passed by the Tribunal is modified as follows: Sl.No. Head of claim Amt awarded by Tri Amt..

modified 1 Transportation charges 5340 Rs. 7,500.00 2 Loss of earning 5000 Rs. 18,000.00 M.A.C.A No.1148/08 5 Sl.No. Head of claim Amt awarded by Tri Amt.. modified Medical treatment 10000 Rs. 10,000.00 3 expenses 4 Extra nourishment 3000 Rs. 3,000.00 5 Bystander expenses 1500 Rs. 3,000.00 6 Damage to clothing 500 Rs. 500.00 7 Pain and sufferings 20000 Rs. 25,000.00 Loss of earning power 30000 Rs. 15,000.00 & Loss of amenities of (loss of life and loss of amenities) 8 enjoyment of life 8 Disfiguration Rs. 15,000.00 9 Permanent disability Rs. 75,600.00 TOTAL 75340 Rs. 1,72,600.00 (Rupees One lakh seventy two thousand and six hundred only) Thus, the appellant will be entitled to a total compensation of Rs.1,72,600/- (Rupees One lakh seventy two thousand and six hundred only) and the enhanced amount will carry interest at the rate of 9% per annum from the date of petition. The Insurance Company is directed to deposit the entire amount of compensation within a period of three months from the date of receipt of a copy of this judgment, less the amount already deposited before the Tribunal and on such deposit being made, M.A.C.A No.1148/08 6 the claimant can withdraw the amount. The appeal is allowed accordingly. The parties will bear their respective costs in this appeal. Sd/- T.R.RAMACHANDRAN NAIR Judge Sd/- P.V.ASHA Judge rtr/ /true copy/ P.S to Judge

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