

Jabbar Vs. Mohammed and Others

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Court : Kerala

Decided On : Mar-20-2015

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

Appellant : Jabbar

Respondent : Mohammed 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 FRIDAY, THE 20TH DAY OF MARCH 2015 29TH PHALGUNA, 1936 MACA.No. 1014 of 2010 ()
----- AGAINST THE AWARD IN OPMV22692004 of MACT, THRISSUR DATED 29-09-2009 APPELLANT/PETITIONER: -----
JABBAR, AGED 55 YEARS, S/O.SAIDALI HAJI, PANIKKAVEETIL KALLUPURAMBIL HOUSE, P.O ORUMANAYUOOR (NEAR CHETTUVA TOLL), THRISSUR DISTRICT. BY ADV. SRI.T.C.SURESH MENON
RESPONDENT(S)/RESPONDENTS: ----- 1. MOHAMMED, S/O.KUNJU MOHAMMED MAMMASARAYILLATH HOUSE, PO KADAPPURAM, CHAVAKKAD THRISSUR DISTRICT.

2. AKBAR, S/O.SAIDU MUHAMMED, POKKAKKILLATH HOUSE, PO., KADAPPURAM CHAVAKKAD, THRISSUR DISTRICT.

3. THE NEW INDIA ASSURANCE CO.LTD, ANUGRAHA BUILDINGS, KUNNAMKULAM, THRISSUR. R,R3 BY ADV. SRI.P.G.GANAPPAN THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 2003-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: T.R.RAMACHANDRAN NAIR & P.V ASHA, JJ.

----- M.A.C.A No.1014 of 2010

----- Dated this the 20th day of March, 2015

JUDGMENT

Asha, J.

The appellant met with a motor vehicle accident on 27.12.2008. While he was riding a motorcycle through Chettuva Chalakkudy public road, a Tempo Van hit him down, causing serious injuries to him. He was immediately taken to Raja Hospital, Chavakkad and from there to Aswini Hospital, Thrissur.

2. As per the wound certificate, the injuries sustained are multiple deep abrasions on forehead, scalp and left cheek, one inch long lacerated wound on right cheek, deep penetrating wound on right thigh, knee and leg, deformed right lower thigh and lower leg with suspected polytrauma. On a further examination in Aswini Hospital, Thrissur he was found to have fracture of right femur and for the compound Grade 11 fracture of middle 3rd of right tibia. He was treated as an inpatient for the M.A.C.A No.1014 of 2010 2 period from 24.07.2004 to 3.08.2004. His disability was found to be 28%.

3. The claim petition was filed seeking compensation to the tune of Rs.2,50,000/-. The Tribunal awarded a sum of Rs.1,43,400/-. This appeal is filed seeking enhancement in compensation. It is submitted by the learned counsel for the appellant that the income reckoned is too low and the compensation awarded towards pain and suffering, loss of amenities etc. are thoroughly inadequate.

4. We heard the learned counsel appearing for the Insurance Company also. The learned counsel submitted that the disability certificate cannot be accepted since it is issued by a single doctor and not by the Medical Board.

5. We find that the doctor who issued the disability certificate was examined as PW1 and there is no reason for disbelieving the said certificate or the assessment made therein. In Ext.A7 disability certificate issued by the Associate Professor and Orthopaedic Surgeon of Medical College Hospital, Thrissur, the permanent physical disability is assessed as 28% due to shortening of right femoral segment with painful limping on right side, non union right supracondylar fracture of femur with M.A.C.A No.1014 of 2010 3 50% rigidity of non union with moderate subjective pain on attempted movements, partial ankylosis of right knee with limitation of flexion from 100 to 600 with 100 flexion deformity, inability to sit on the floor with severe pain on attempted flexion of knee, evidence of cruciate injury to right knee with posterior instability of knee joint, instability of right knee and non union of right femur. Tribunal has assessed the compensation towards disability reckoning the disability as 15% only. We do not find any reason for not accepting the disability as assessed in Ext.A7 certificate, ie. 28%, especially in view of the nature of the disabilities explained therein.

6. The Tribunal reckoned the income of the appellant as Rs.2,500/- as against the claim of the appellant as Rs.5000/- on being employed as a Cook. The appellant was aged 55 years at the time of the accident and was working as a Cook. Having regard to the wage structure prevailing at the relevant time, we fix his monthly income as Rs.4,500/-. Therefore the compensation under the head 'disability' will come to Rs.1,66,320/- (ie., $Rs.4500 \times 12 \times 11 \times 28 / 100$). The Tribunal has awarded a sum of Rs.7,500/- towards loss of earning, ie. for a period of 3 months @Rs.2,500/-. Therefore the compensation M.A.C.A No.1014 of 2010 4 under this head is enhanced to Rs.13,500/- ($Rs.4500 \times 3$). The Tribunal has not awarded any amount towards pain and suffering or loss of amenities. In view of the grievous nature of the injuries as well as the various procedures of treatment undergone by the appellant and having regard to the discomfort and inconvenience he had suffered, we award a sum of Rs.30,000/- towards pain and suffering. Similarly on account of the disability as explained above, the appellant will not be in a position to enjoy the normal amenities of his life as he was enjoying before the accident. Therefore, we award Rs.30,000/- towards loss of amenities. The appellant has undergone in-patient treatment in the hospital for a period of 11 days. Therefore towards bystander's expenses we award a sum of Rs.2,750/- @ Rs.250/- per day

for 11 days. The Tribunal has awarded only a sum of Rs.1,000/- towards transportation which we enhance to Rs.2,000/-. We award a sum of Rs.10,000/- towards future treatment in view of the fact that he requires further treatment. Thus the award passed by the Tribunal is modified as follows: Head of claim Amount Awarded in rupees Loss of earning 13500 Transportation 2000 M.A.C.A No.1014 of 2010 5 Head of claim Amount Awarded in rupees Extra nourishment 2000 Damages to clothing 500 Treatment expenses 66400 Bystander's expenses 2750 Pain and suffering 30000 Loss of amenities 30000 Permanent disability 166320 Future treatment 10000 Total 323470 (Rupees three lakhs twenty three thousand four hundred and seventy only) The enhanced compensation will carry interest @ 9% per annum from the date of petition. The Insurance Company shall deposit the amount before the Tribunal, less the amount already deposited, within a period of three months from the date of receipt of a copy of this judgment and on such deposit being made, 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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