

Samseer K. Vs. M.Satheesan and Others

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Court : Kerala

Decided On : Apr-09-2015

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

Appellant : Samseer K.

Respondent : M.Satheesan 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 THURSDAY, THE 9TH DAY OF APRIL 2015 19TH CHAITHRA, 1937 MACA.No. 1846 of 2008 (A) ----- AGAINST THE AWARD IN OPMV21981999 of M.A.C.T.,KOZHIKODE DATED 04-06-2007 APPELLANT: PETITIONER ----- SAMSEER K., S/O.BASHEER.K, AGED 22 YEARS, KADALERIMMALPADI HOUSE, KARUVANTHURUTHY POST, FEROKE, KOZHIKODE. BY ADVS.SRI.SUDEESH KUMAR RAMAKRISHNA SRI.SUNIL KUMAR A.G RESPONDENT(S): RESPONDENTS ----- 1. M.SATHEESAN, S/O.VASU K.P.NIVAS, PERUMUGHAM POST, NALLUR, FEROKE KOZHIKODE.

2. K.K.VINOD KUMAR, S/O.KUNCHIRAMAN, MANIYATHU KALAKI VEEDU, MANNUR POST, KOZHIKODE.

3. P.HASSAN, S/O.AHAMMEDKUTTY HAJI MANNILTHODE HOUSE, FEROKE POST, PETTA KOZHIKODE.

4. M.RAJAN NAIR, S/O.MADHAVAN NAIR, PARAMBIL VEEDU, CHELEMBRA POST, MALAPPURAM.

5. THE NEW INDIA ASSURANCE CO.LTD., DIVISIONAL OFFICE, MAVOOR ROAD, KOZHIKODE. R,R1 & R2 BY ADV. SRI.C.K.SREEJITH R,R5 BY ADV. SRI.N.S.MOHAMMED USMAN THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON0904-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: T.R.RAMACHANDRAN NAIR & P.V ASHA, JJ.

----- M.A.C.A No.1846 of 2008

----- Dated this the 9th day of April, 2015

JUDGMENT

Ramachandran Nair, J.

In this appeal filed by the claimant, his grievance is that the Tribunal has not assessed the compensation correctly. The appellant was aged 15 years at the time of the accident and was studying in the 9th standard. The Tribunal has granted a total amount of Rs.2,30,210/-.

2. The accident occurred on 23.03.1999 while he was proceeding on a bicycle through Feroke Bazar towards Ramanattukara side in Kozhikode. The driver of a stationary Jeep bearing Reg.No.KL-11-H-5468 which was parked on the side of the road abruptly moved the same. The appellant was thrown out of his bicycle after the jeep hit the same and he fell underneath a moving stage carriage bus bearing Reg.No.KLM8739 He sustained serious injuries and was taken to the M.A.C.A No.1846 of 2008 2 Medical College Hospital, Kozhikode. The total amount claimed was Rs.4,50,000/-.

3. The learned counsel for the appellant submitted that very serious injuries have been caused in the accident and before this Court the appellant has produced

various documents including the disability certificate issued by the Medical Board of the Medical College Hospital, Kozhikode, dated 12.07.2011 wherein the percentage of disability is shown as 44%. It is submitted that his treatment is being continued even now.

4. The major injury suffered was to the left hip. He had also sustained extensive avulsion of skin and circutaneous tissues over right upper thigh and back. He was examined as PW1 and gave a detailed account of the treatment. From the Farook Hospital, he was taken to the Medical College Hospital. He had to undergo 3 surgeries. Open reduction and nail fixation were done. Since he had sustained crush injuries under the tyre of the bus, the injuries were all very serious in nature. He was treated as an inpatient for a period of 144 days.

5. It is after the initial treatment, he was referred to the Medical College Hospital, for expert treatment. Ext.A5 is the certificate issued by the Principal of Govt. Ganapat Vocational Higher Secondary School showing his academic details. Ext.A6 M.A.C.A No.1846 of 2008 3 shows the details of injuries sustained by him, which include fracture of pelvis and blunt injury to abdomen. Ext.A8 also supports the case of sustaining serious injuries. The Tribunal has noted that his situation is most pathetic and even after prolonged treatment, the fracture sustained to pelvis was not properly united. The total destruction of femoral head of right side with proximal migration was noticed. Urethra was ruptured with disfunction. Urological and erectile disfunction was certified at 20% and the other permanent disability due to malunion of fracture of pelvis is assessed at 30%. All these have prompted the Tribunal to record that he is in the most pathetic situation. But the Tribunal did not rely upon the certificates issued by individual doctors.

6. Para.9 shows that he was referred to the Medical Board in the year 2006 and 20% disability was assessed due to the injuries sustained to the hip and blunt injury sustained to abdomen. The same is marked as Ext.C1.

7. The Tribunal has assessed the compensation in the following manner: Sl.No. Head of claim Amt. 1 Hospitalization and incidental charges Rs. 21,750.00 2 Medical expense including Ext.A7 series bill Rs. 20,000.00 M.A.C.A No.1846 of 2008 4 Sl.No. Head of claim Amt. 3 Pain and suffering Rs. 25,000.00 4

Disfiguration of body Rs. 10,000.00 5 Loss of expectation in life Rs. 15,000.00 6
Transportation Rs. 2,000.00 7 Disability Rs. 45,000.00 Loss of amenity (loss of
sexual ability) as per Rs. 20,000.00 8 Ext.C1 Total Rs.1,58,750.00 8. Heard the
learned counsel on both sides. The learned counsel for the appellant submitted
that the Tribunal should have awarded amount towards future treatment as well as
for the continuing and permanent disability. The amount awarded towards
disability is only Rs.45,000/-. Even though he was a student, a proper assessment
should have been made, it is submitted. Even going by Ext.C1, there will be loss of
married life as far as the appellant is concerned. This will affect his further life to a
large extent. Therefore it is submitted that for pain and suffering and for loss of
amenities and loss of expectation of life, proper amount ought to have have been
granted by the Tribunal. The learned counsel for the Insurance Company
submitted that proper compensation has been awarded.

9. It is a case where the serious injuries have resulted in deprivation of normal life
for a young boy. Certificates and M.A.C.A No.1846 of 2008 5 documents produced
before this Court along with I.A.No.1411 of 2015 will show that he has been
continuing the treatment. Annexure-A3 certificate will show that he had urinary
problems because of the urethral injury.

10. Even though the learned counsel for the Insurance Company submitted that
the disability certificate produced now cannot be accepted, we find that since it is
issued by the Medical Board, the same can be adopted. What is found by the
Medical Board is that he is suffering from post traumatic stiffness right hip joint.
Therefore his movements are affected.

11. For all these reasons we find that he is entitled for just and fair compensation.
For assessing reasonable amount of compensation we take the annual income as
Rs.24,000/- and the multiplier would be 15. By adopting disability as 44%, the
compensation would be : $\text{Rs.24,000} \times \frac{44}{100} \times 15 = \text{Rs.1,58,400/-}$. For pain and
suffering, what is awarded by the Tribunal is Rs.25,000/-. In fact even now
treatments are continuing. Therefore we grant Rs.50,000/- towards pain and
suffering and for disfiguration of body, Rs.35,000/- is granted. For loss of
amenities, including loss of marriage prospects, because of the inabilities of the

appellant proper compensation will have to be awarded. The disability has affected his normal avocations and it M.A.C.A No.1846 of 2008 6 has deprived the pleasures of life also. He is unable to carry on any normal avocation also.

12. For all these reasons, we grant an amount of Rs.1,00,000/- towards loss of enjoyment of life and loss of amenities in life. The Tribunal has granted Rs.21,750/- towards hospitalization and incidental charges As far as the loss of expectation of life also we grant a total amount of Rs.30,000/-. One of the aspects which have not been considered by the Tribunal is the requirement of future treatment. Even going by the evidence adduced before the Tribunal, the fracture has not been united. Documentary evidence adduced before this Court will also show that the treatment is continuing. Even though the medical bills produced are of subsequent dates, we are considering the same only for assessment for compensation towards future treatment and we provide Rs.50,000/- for future treatment.

13. The award passed by the Tribunal is accordingly modified as follows: Sl.No. Head of claim Amt. 1 Hospitalization and incidental charges Rs. 21,750.00 2 Medical expense including Ext.A7 series bill Rs. 20,000.00 Loss of enjoyment in life and loss of marriage Rs.1,00,000.00 3 prospects, and loss of amenities in life M.A.C.A No.1846 of 2008 7 Sl.No. Head of claim Amt. 4 Pain and suffering Rs. 50,000.00 5 Disfiguration of body Rs. 35,000.00 6 Loss of expectation in life Rs. 30,000.00 7 Transportation Rs. 2,000.00 8 Disability Rs.1,58,400.00 9 Future treatment Rs. 50,000.00 Total Rs.4,67,150.00 (Rupees Four lakhs sixty seven thousand one hundred and fifty only) The appellant will be entitled to a total compensation of Rs.4,67,150/- (Rupees Four lakhs sixty seven thousand one hundred and fifty only). The enhanced compensation will carry interest @ 9% per annum from the date of petition. The Insurance Company is directed to deposit the entire amount of compensation, less the amount already paid, within 3 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

