

Rasheed Vs. A.B.Santhosh Kumar and Others

Rasheed Vs. A.B.Santhosh Kumar and Others

SooperKanoon Citation : sooperkanoon.com/52059

Court : Kerala

Decided On : May-21-2015

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

Appellant : Rasheed

Respondent : A.B.Santhosh Kumar and Others

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR & THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH THURSDAY, THE 21ST DAY OF MAY 2015 31ST VAISAKHA, 1937 MACA.No. 2158 of 2007 ()
----- AGAINST THE

JUDGMENT

IN M.V.O.P. 727/2002 OF MOTOR ACCIDENTS CLAIMS TRIBUNAL, IRINJALAKUDA DATED 14-08-2007 APPELLANT/PETITIONER:
----- RASHEED, S/O. PAREED CHITTEZHATH HOUSE, P.O.MATHILAKOM, PUTHIYAKAVU THRISSUR DISTRICT. BY ADV. SRI.N.KRISHNANKUTTY PILLAI
RESPONDENTS/DEFENDANTS: ----- 1.
A.B.SANTHOSHKUMAR, S/O. BALAN ALAYIL HOUSE, KOTHAPARAMBU, KODUNGALLUR THRISSUR DISTRICT 2 SUNILKUMAR, S/O. KUTTY, VAZHAPILLY HOUSE, VELLOOR P.O., PUTHENCHIRA THRISSUR DISTRICT.

[RESPONDENT NO.2 IS DELETED FROM PARTY ARRAY AS PER

ORDER

DATED 74.2.2015 IN I.A.NO.1301/2015 IN MACA21582007] 3. THE MANAGER, NATIONAL INSURANCE CO.LTD BRANCH OFFICE, MALIAKKAL BUILDING, IRINJALAKUDA. R3 BY ADV. SRI.P.JAYASANKAR THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 21.05-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: shg/ T.R. RAMACHANDRAN NAIR & K.P. JYOTHINDRANATH, JJ.

----- M.A.C.A. No.2158 of 2007 -----
----- Dated this the 21st day of May, 2015

JUDGMENT

Ramachandran Nair, J.

After suffering grievous injuries in the accident, the appellant approached the Tribunal for grant of adequate compensation. As against the claim of Rs.10 lakhs the Tribunal has awarded a total amount of Rs.6,24,050/-, out of which, Rs.4,37,947/- was granted for medical expenses. This is the background under which the appellant has approached this court for adequate compensation.

2. We heard the learned counsel on both sides.

3. The accident occurred at Pori Bazar at about 10.45 p.m. on 13.02.2002. He was riding a motorcycle No. KL.8/M4034 which was hit by a lorry having registration No.KL.8/G5313 M.A.C.A. No.2158 of 2007 -2- 4. The appellant had adduced oral and documentary evidence in support of his claim. The doctor was examined as PW1 and Exts.A1 to A18 were marked. Ext.X1 is the case sheet issued by the Medical Trust Hospital, Kochi.

5. In paragraph 6 of the award the following injuries have been noticed: "Fracture of the terminal phalanx of right index finger, comminuted fracture of the shaft of right femur, comminuted fracture of upper 3rd of right tibia, crack fracture of left lateral malleolus, comminuted fracture of the right ulna, fracture of the middle

phalanx of ring finger and middle finger, fracture of temporal bone and also fracture of petrous." 6. It is clear that he has suffered multiple fractures all over his body. The total period of treatment will be 201 days in different hospitals. He was treated in the Modern Hospital, Kodungallur, Medical Trust Hospital, Kochi, Taluk Head Quarters Hospital, Kodungallur and Irinjalakuda as well as St. James Hospital, Chalakudy. In paragraph 7 of the award, there is a detailed discussion of documentary evidence showing the treatment undertaken by the M.A.C.A. No.2158 of 2007 -3- appellant. He was admitted in St. James Hospital, Chalakudy twice. It is clear that he had availed of different treatment procedures.

7. We have gone through the disability certificate issued in his favour which shows the permanent partial disability as 45%. The certificate clearly details the surgical procedures undertaken by him in paragraph 2. The surgical procedures include interlocking of right tibia, excision of right radial head etc. It is recorded in the certificate that presently he has got pain and stiffness of right knee, right elbow and right hip. He walks with auxiliary crutch support. He cannot squat or sit cross legged and he cannot do any job. The doctor has noted that on examination he has the following disabilities: (a) osteoarthritis of right knee joint (b) osteoarthritis of right ankle joint (c) chronic synovitis of right hip joint (d) right elbow stiffness (e) right femur delayed union (f) Tenderness over both iliac crest over the site of bone graft. M.A.C.A. No.2158 of 2007 -4- and finally it is stated that based on the above finding he has got permanent partial disability of about 45% according to Mcbrides scale. This certificate was issued by PW1 doctor.

8. In awarding compensation, the learned Tribunal has not fully accepted the percentage of disability and whole body disability was taken as 20% alone. As rightly pointed out by the learned counsel for the appellant the multiple injuries have resulted in whole body disability obviously and it is not a disability to a particular limb also. Therefore in the light of the certificate the details of which we have already extracted, according to us also the percentage of disability can safely be adopted as 45%. The appellant was aged 26 at the time of the accident and it was stated that he was working as an electrician in gulf countries. But to prove the same no proper documentary evidence was produced. Therefore the learned Tribunal has fixed the notional monthly income at Rs.2,000/-. According to us,

being a skilled worker, a higher amount can be fixed M.A.C.A. No.2158 of 2007 -5- as monthly income and it is fixed as Rs.3,500/- for the purpose of assessing the compensation.

9. It is seen from paragraph 9 of the award that the learned Tribunal has granted expenses for bystanders by splitting the period of treatment to 96 days initially and 105 days subsequently. For the first period Rs.200/- per day and for the second period of hospitalisation Rs.100/- per day has been calculated. There cannot be a distinction like this for the purpose of granting compensation for bystanders' expenses. Therefore we adopt the uniform rate of Rs.200/- for the period of 201 days which will make the total amount as Rs.40,200/-. The amount towards partial loss of earnings was granted for a period of six months and the total amount was fixed as Rs.12,000/- at the rate of Rs.2,000/- per month and in the light of the adoption of Rs.3,500/- as income, the amount will be Rs.21,000/-. As far as the compensation for pain and sufferings is concerned what is granted by the Tribunal is Rs.40,000/-. It is enhanced to Rs.60,000/- in the light of the long period of treatment, surgical procedures M.A.C.A. No.2158 of 2007 -6- undertaken as well as the seriousness of injuries suffered. The amount of compensation liable to be granted for permanent disability is Rs.3,21,300/- ($3500 \times 12 \times 17 \times 45/100$). In the light of the permanent disability he has suffered it is evident that there will be loss of enjoyment in life and loss of amenities in life for which we grant a total amount of Rs.50,000/- as compensation. The Tribunal has awarded Rs.3,000/- towards transportation which we enhance to Rs.5,000/-.

10. Accordingly, we refix the compensation as shown below:

Head of claim	Amount Awarded in rupees
Bystanders' expenses	40200
Partial loss earnings	21000
Pain and suffering	60000
Compensation for permanent disability ($3500 \times 12 \times 17 \times 45/100$)	321300
Loss of enjoyment in life and loss of amenities in life	50000
Expenses for transportation	5000
Medical expenses	4,37,950

M.A.C.A. No.2158 of 2007 -7- Head of claim Amount Awarded in rupees Total 9,32,450/- (Rupees nine lakh thirty two thousand four hundred and fifty only) The enhanced amount will carry interest at the rate of 9% per annum from the date of petition till realisation. The parties will suffer their costs in the appeal. There will be a direction to the Insurance Company to deposit the amount of compensation, less the

amount already deposited before the Tribunal, within a period of three months and we permit the claimant to withdraw the amount when the amount is deposited by the Insurance Company. The appeal is accordingly allowed. Sd/- T.R. RAMACHANDRAN NAIR JUDGE Sd/- K.P. JYOTHINDRANATH JUDGE shg/

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com