

Sameer Babu Vs. Ahammed Usman Pari and Others

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Court : Kerala

Decided On : May-22-2015

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

Appellant : Sameer Babu

Respondent : Ahammed Usman Pari 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 FRIDAY,THE22D DAY OF MAY2015/1ST JYASHTA, 1937 MACA.No. 537 of 2009 ----- AGAINST THE AWARD IN OPMV14572000 OF II ADDITIONAL MOTOR ACCIDENTS CLAIMS TRIBUNAL, KOZHIKODE DATED2009-2008 APPELLANT/PETITIONER IN OP(MV): ----- SAMEER BABU, AGED24YEARS, THAKKUKULAM VEEDU, AMAYOOR.P.O, MALAPPURAM. BY ADV. SRI.AVM.SALAHUDIN RESPONDENTS/RESPONDENTS IN OP(MV): ----- 1. AHAMMED USMAN PARI, S/O. UMMER PARY, AGED NOT KNOWN, RESIDING AT MURAD MANZIL HAJIYARPALLI.P.O MALAPPURAM (OWNER OF THE CAR NO. KL-10/E8485 2. V.V. SHEREEF, S/O. HASSAN, AGED32YEARS, RESIDING AT VELOORYALAPPA HOUSE KADALUNDI.P.O, KOZHIKODE (DRIVER OF THE CAR NO. KL-10/E8485 [RESPONDENT NO.2 IS DELETED FROM PARTY

ARRAY AT THE RISK OF APPELLANT AS PER

ORDER

DATED 13.3.2015 IN I.A.NO.974/2015 IN MACA5372009] 3. ORIENTAL INSURANCE COMPANY LIMITED, BRANCH OFFICE, JASEELA COMPLEX, NILAMBUR ROAD MANJERI, MALAPPURAM (INSURER OF THE CAR NO.KL10/E8485 R3 BY ADV. SRI.P.V.JYOTHI PRASAD THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 22.05-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: shg/ T.R. RAMACHANDRAN NAIR & K.P. JYOTHINDRANATH, JJ.

----- M.A.C.A.No.537 of 2009 -----

--- Dated this the 22nd day of May, 2015

JUDGMENT

Ramachandran Nair, J.

The appellant who was a 15 year old boy at the time of accident has come up before this court seeking enhancement of compensation. As against the total claim of Rs.2 lakhs the Tribunal has awarded an amount of Rs.77,421/-.

2. Heard both sides.

3. A narration of the facts will be necessary to assess the physical disability of the appellant. The accident occurred on 11.02.2000 at 9.15 a.m. He was riding a bicycle from Amayoor to Karakkunnu school and the accident spot is near Anakottupuram road. The offending vehicle, a car bearing registration No.KL-10/E-8485 hit the appellant and he was thrown away on the road and sustained serious injuries. He was taken to the Medical College Hospital, Calicut for treatment. M.A.C.A.No.537 of 2009 -2- 4. The medical reports have been produced in evidence and Ext.A3 is the certificate issued from the Department of Physical Medicine and Rehabilitation, Medical College, Calicut. The said certificate would show that he was treated as inpatient in the Medical College Hospital from 11.02.2000 to 26.04.2000 as I.P.No.7839. When he was admitted in the surgery

ward he had traumatic brain injury and left hemiplegia, fracture mandible and fracture neck of left radius. Then he was transferred to the Physical Medicine Department for rehabilitation. He was readmitted on 23.09.2000 and was discharged on 17.10.2000.

5. Ext.A4 is the O.P. Ticket and Ext.A5 is the Treatment Book. Ext.A5 shows that he was admitted on 11.02.2000 and discharged on 26.04.2000. It is stated that he continued his treatment up to 25.09.2006. Ext.A6 and Ext.A7 are two C.T.scan reports. The evidence will therefore prove that he was treated continuously for a long period. Ext.X1 is the case sheet and Ext.X2 is the disability M.A.C.A.No.537 of 2009 -3- certificate. We have gone through the disability certificate, wherein it is recorded that he is having minimal spasticity and weakness of (L) upper and lower limb following traumatic brain injury. The percentage of permanent disability is noted as 15. Going by the evidence he was a student in 10th standard. The Tribunal has granted compensation under different heads as shown below: Head of claim Awarded in rupees Transport to hospital 2000 Extra nourishment 1000 Damage to clothing and article 1000 Medical expenses 9671 Bystander expenses 10000 Pain and suffering 15000 Compensation for permanent disability 33750 Compensation for loss of amenities in life 5000 Total 77421 6. The learned counsel for the appellant vehemently prayed for enhancement of compensation.

7. For the purpose of assessing the percentage of permanent disability the Tribunal has taken the annual M.A.C.A.No.537 of 2009 -4- income as Rs.15,000/- being a student. The accident occurred in the year 2000. We are of the view that the amount fixed for assessing the compensation is too low and it is justifiable in taking the monthly income at least at the rate of Rs.3,000/-. The multiplier going by the table provided in the decision of the Apex court in Sarla Varma v. Delhi Transport Corporation [2010 (2) KLT802(SC)] will be 15. The compensation towards permanent disability therefore will be Rs.81,000/-. We also are of the view that towards the bystander's expenses what is granted by the Tribunal is at the rate of Rs.100/- per day which we enhance to Rs.150/- per day for 100 days and the same will be Rs.15,000/-. For pain and suffering what is granted by the Tribunal is Rs.15,000/-. He had suffered serious injuries and had been under continuous treatment for a period of 98 days. The appellant being a minor would

have suffered much pain and difficulties due to the injury sustained and the treatment undertaken. Therefore, we enhance the same to Rs.35,000/-. M.A.C.A.No.537 of 2009 -5- 8. For loss of amenities in life what is granted by the Tribunal is Rs.5,000/- only. There is permanent disability of 15% going by the disability certificate. The major injury sustained by him is brain injury also. The weakness of lower and upper limb have been recorded by the medical board. Therefore, it will affect his normal activities and his capacity to lead a normal life, to an extent. Therefore, we enhance the amount towards loss of amenities and loss of enjoyment in life to Rs.50,000/-. The total compensation therefore will be Rs.1,94,671/-, which we rounded off to Rs.1,94,670/-. The enhanced compensation will carry interest at the rate of 9% from the date of petition till realisation.

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

Head of claim	Awarded in rupees
Transport to hospital	2000
Extra nourishment	1000
Damage to clothing and article	1000
Medical expenses	9671
M.A.C.A.No.537 of 2009 -6-	
Head of claim	Awarded in rupees
Bystander expenses	15000
Pain and suffering	35000
Compensation for permanent disability	81000
Compensation for loss of amenities in life	50000
Total	194671 (Rounded off to Rs.1,94,670/-) (Rupees one lakh ninety four thousand six hundred and seventy only)

10. 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. There will be no order as to costs in the appeal. Sd/- T.R. RAMACHANDRAN NAIR JUDGE Sd/- K.P. JYOTHINDRANATH JUDGE shg/