

M.P. Babu Vs. Commandant General, Home Guard Civil Def

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Court : Kerala

Decided On : Jun-09-2015

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

Appellant : M.P. Babu

Respondent : Commandant General, Home Guard Civil Def

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 TUESDAY, THE 9TH DAY OF JUNE 2015 19TH JYAISHTA, 1937 MACA.No. 1154 of 2008 ()
----- AGAINST THE AWARD IN OPMV19201999 of MACT, ALAPPUZHA DATED 26-05-2006 APPELLANT/PETITIONER: -----
M.P.BABU, S/O.PADBHANABHAN, MALIYAKKAL HOUSE, THYCKAL PO., CHERTHALA BY ADV. SRI.J.OM PRAKASH RESPONDENTS/RESPONDENTS: -----
----- 1. THE COMMANDANT GENERAL, HOME GUARD CIVIL DEFENCE AND FIRE SERVICE KERALA SASTHAMANGALAM, THIRUVANANTHAPURAM 2 PRASANNAKUMAR, S/O.SURENDRAN, KOCHUKARIYIL HOUSE, VAYALAR WEST PO., CHERTHALA 3 THE UNITED INDIA INSURANCE CO.LTD., DIVISIONAL OFFICE, MALANKARA BUILDINGS, PALAYAM R2 BY ADV. SRI.C.V.MANUVILSAN R2 BY ADV. SRI.T.K.SUJITH R1 BY ADV. GOVERNMENT PLEADER R3 BY ADV. SRI.RAJESH THOMAS THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD

ON0906-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: T.R.RAMACHANDRAN NAIR & K.P.JYOTHINDRANATH, JJ.

----- M.A.C.A.No.1154 OF2008-----

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

JUDGMENT

Ramachandran Nair, J.

In this appeal filed by the claimant, the main plea raised by the appellant is that in spite of sustaining serious injuries as well as disability, the Tribunal has granted only an amount of `63,500/- out of the total amount of `2,50,000/- claimed.

2. The appellant is the claimant in O.P.(MV)No.1920/1999. The said O.P. was tried along with O.P.(MV)No.1921/1999, wherein also he claimed compensation for the death of his wife in the very same accident, which occurred on 10.11.1999. The family was travelling in his scooter, which was knocked down by a speeding fire force vehicle.

3. As far as the appellant's case is concerned, the following are the injuries sustained by him : Fracture both bones right leg, multiple MACA No.1154/2008 2 lenear fracture of the right frontal bone involving the anterior wall of right frontal sinus, multiple lenear fracture of the anterior and lateral wall of right orbit extending into the floor of right anterior ernaial fossa, another undisplaced lenear fracture in the left anterior ernaial fossa, thin subdural hematoma in the frontal region, small haemorrhagice contusion in the right frontal cortex, extra cranial soft tissue swelling involving the right temporal and frontal region, moderate cerebral oedema, lacerated wound 5 x 3 cm. Middle 1/3 of right leg, lacerated wound 4x 2 cm. Right temporal region, lacerated wound right UL wed spine and black eye (+) (L).

4. The appellant was admitted in the KVM Hospital, Cherthala and later in the Medical College Hospital, Alappuzha and the treatments and other steps taken by the hospital are clear from Ext.A11. Ext.A12 is the certificate issued by Orthopaedic surgeon showing the permanent disability as 10%.

5. It was the case of the appellant that he had been inpatient for a period of three weeks. But the Tribunal found on a verification of Ext.A9 that the date of discharge is not correctly recorded therein. MACA No.1154/2008 3 6. As regards the monthly income of the appellant, what was claimed in the application is @ `4,500/- being an Electrician. In this context, the appellant relied upon Ext.A13 certificate issued by the Village Officer, Kadakkarappally wherein it was certified that the appellant was getting yearly income of `53,300/-. The appellant had also produced Ext.A14 certificate issued by the proprietor of Sree Muruka Engineering Works, Pattanakkad certifying that the appellant was a permanent member of technical staff from 1994 and he was drawing salary of `4,000/- per month and had received bonus ( ` 450/-) for the year 1998-99. To prove the qualification of the appellant, Ext.A15 was produced, which is the provisional National Trade Certificate issued by the Principal, Sobha Industrial Training Centre, Cherthala. He had passed the prescribed trade in July, 1986.

7. Before the Tribunal, the appellant had examined the doctor as PW1 and the Village Officer as PW2. Even though the Village Officer was examined and certificates were produced, the Tribunal refused to accept the evidence in full and fixed the monthly income at `2,000/-. According to the learned counsel for the appellant, the same MACA No.1154/2008 4 is on a lower estimate. It is submitted that being a qualified Electrician, he was earning more.

8. The learned counsel for the Insurance Company supported the fixation of monthly income at ` 2,000/-.

9. We are of the view that in the light of the documentary evidence as well as the oral evidence of the Village Officer, it will be safe to adopt `4,000/- as the monthly income. He was a skilled labourer and would have been earning more than a daily labourer.

10. The evidence is to the effect that he has sustained permanent disability of 10% and the Doctor has certified that the appellant has malunited fracture of both bones of right leg and there is 2 cm. shortening to the right leg. It is the case of the appellant that being an Electrician, this will considerably affect his skill and labour. The Tribunal accepted the percentage of disability as 10% itself, which we confirm.

As regards the age of the appellant, the finding is that he was aged above 35 years and therefore in the light of the judgment of the Apex Court in *Sarla Varma v. Delhi Transport Corporation* (2010 (2) KLT802(SC), the multiplier will be 15, which we adopt. MACA No.1154/2008 5 But according to us, the appellant will be entitled for more amounts towards pain and suffering as well as disability. The disability will definitely affect his amenities in life and will cause lot of inconvenience to him. There is a disfigurement also due to shortening and it is also recorded that he cannot walk for a long time.

11. We therefore, refix the compensation in the following manner : Head of claim
Amount awarded in rupees
Loss of earnings 16000 (4000 x 4)
Cost of medicines 1500
Transportation 1000
Bystander's expenses 2500
Damage to clothes 500
Extra nourishment 600
Pain and suffering 30000
Disability 72000 (4000 x 12 x 15 x 10%)
Disfigurement, loss of amenities etc. 25000
Total 149100 (Rupees one lakh forty nine thousand one hundred only) MACA No.1154/2008 6 12. The enhanced compensation will carry interest @ 9% per annum from the date of petition. The Insurance Company shall deposit the amount less the amount already deposited before the Tribunal within three months. The appeal is accordingly allowed. The parties will bear their costs in the appeal.
T.R.RAMACHANDRAN NAIR, JUDGE K.P.JYOTHINDRANATH, JUDGE sv.

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