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Robin Babu Vs. Kunjappan

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Court : Kerala

Decided On : Jul-01-2015

Judge : Honourable Mr. Justice Alexander Thomas

Appellant : Robin Babu

Respondent : Kunjappan

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 WEDNESDAY, THE1T DAY OF JULY201510TH ASHADHA, 1937 MACA.No. 261 of 2010 ( ) ---------- AGAINST THE AWARD IN OPMV27502001 of M.A.C.T.,ERNAKULAM DATED2412-2008 APPELLANT/PETITIONER: ---------- ROBIN BABU POOTHAVELIL HOUSE, NEAR MARKET JUNCTION, UDAYAMPERUR MANAKUNNAM VILLAGE, KANAYANNOOR TALUK. BY ADVS.SRI.T.K.KOSHY SRI.T.A.RAJAN SRI.P.GIREESH KUMAR RESPONDENTS/RESPONDENTS1TO3 ---------- 1. KUNJAPPAN, S/O ITTIYATHY ALUMPARAMBIL HOUSE, NEAR KARICODE SCHOOL KARICODE KARA, MULANTHURUTHY VILLAGE.(DELETED) 2. N.D.GEORGE, NJARATHDOM, MULANTHURUTHY P.O3 THE UNITED INDIA INSURANCE CO.LTD., BRANCH OFFICE, MANIKANAMPARAMBIL BUILDING, LAYAM ROAD TRIPUNITHURA. * RESPONDENT NO.1 IS DELETED FROM THE PARTY

ARRAY AT THE RISK OF THE APPELLANT VIDE

ORDER
DATED61.2014 IN I.A.NO.3250/2013. R3 BY ADV. SRI.RAJAN P.KALIYATH THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON0107-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: T.R.RAMACHANDRAN NAIR & K.P.JYOTHINDRANATH, JUDGE, JJ.

- M.A.C.A.No.261 OF2010- Dated this the 1st day of July, 2015

JUDGMENT
Ramachandran Nair, J.

The appellant, a Government servant, and is working in the Excise Department is seeking for enhancement of compensation. Before the Tribunal the total claim was for Rs.7 lakhs and the amount awarded by the Tribunal is Rs.4,17,000/-.

2. At the time of the accident, he was aged 36 years. The accident occurred on 3.2.2002 when the motor cycle which he was riding was hit by a lorry driven by the first respondent. The third respondent is the insurer of the vehicle and the finding is that the third respondent is liable to indemnify the owner. The appellant sustained a crush injury in the right ankle with multiple laceration. He was immediately given first aid from the Community Health Centre, Vaikom and he was referred to Medical College Hospital, Kottayam. But on the same day, he was shifted to Specialist Hospital, Ernakulam. MACA No.261/2010 2 3. Due to the ill fate of the appellant, he had to suffer amputation because of the crush injury. Initially in the specialist hospital, wound debridment was done on three occasions and external fixator was applied. Post tibial nerve and artery were served with segmental loss He was advised to have below knee amputation and prosthetic fittings. Thereafter he was admitted in the Christian Medical College, Velloor for further treatment and the treatment undertaken therein is supported by Ext.A6 case summary. Below knee amputation in the right leg was done and he was thereafter discharged from the hospital.

4. The total period of inpatient treatment is 37 days in three phases as found by the Tribunal. He continued as outpatient for a period of 7 days which is recorded in Ext.A17.

5. The learned counsel for the appellant submitted that the appellant was a Preventive Officer in the Excise Department at the time of the accident. Because of the amputation to his leg, he could not attend department examination for promotion and his promotion prospects were delayed. It is submitted that because of the special MACA No.261/2010 3 nature of the duties in the Excise department, lot of inconvenience will be there and this aspect also has to be considered by this Court while granting compensation.

6. The learned counsel for the Insurance Company submitted that the appellant has been properly compensated by the Tribunal. It is also submitted that since the job in which he was continuing was never affected and as he is continuing in the said department, there is no loss of earning power and this aspect may have to be considered by this Court.

7. One of the points highlighted by the learned counsel for the appellant is the requirement to change the artificial limb intermittently. In support of the claim, the appellant has produced along with I.A.No. 2916/2014 the proforma invoice issued by the manufacturer of the said system showing a total amount of Rs.1,20,000/- in the year 2012. It is submitted by the learned counsel for the Insurance Company that only a reasonable amount can be awarded and he also reminded us that the accident had occurred in the year 2002.

8. The Tribunal has considered various aspects and concluded MACA No.261/2010 4 that the percentage of disability will be 30 but without the aid of a disability certificate. Before this Court, the appellant filed an application to examine himself by the Medical Board which was allowed by a Division Bench as per order dated 6.1.2014 in I.A.No.314/2010, pursuant to which the Medical Board of the Government Medical College Hospital, Kottayam examined him and the percentage of disability is reported as 40% as per certificate dated 5.2.2014, which we mark as Ext.A19. Therefore we will have to reckon the permanent disability as 40%. In a case where there is no loss of job for the person concerned, this Court

will have to consider the claim for awarding the amounts for the physical disability. The physical injury (disability) itself will have to be compensated. Herein even though there is a vehement argument that there will be functional disability and that future prospects for promotion will be affected, in the absence of concrete evidence to that effect, this Court will not be justified in granting amounts towards future loss of promotion chances, if any.

9. But in the light of the loss of amenities in life and MACA No.261/2010 5 continued pain and suffering he may have to face due to the amputation and the recurring problems to which he will have to seek medical help from time to time, the same has to be considered by this Court. We are fortified in our view in the light of the judgment of the Apex Court Dinesh Singh v. Bajaj Allianz General Insurance Co. Ltd. (2014 ACJ1412, wherein in the case of amputation of leg of a qualified Engineer where 60% permanent disability was reported the Apex Court granted compensation under various heads including for future treatment and the cost of the artificial limb.

10. The Tribunal has already granted Rs. 1 lakh towards future treatment and for purchase of BK Systems based on Ext.A12. One of the aspects pointed out is the award of Rs.9,000/- only for loss of earnings. It is submitted that he was on leave exactly for 91 days and Ext.A15, copy of relevant page of the service book was marked in evidence. It is clear that he would have been incapacitated for such period due to the accident and the treatment done. Going by Ext.A14, he was getting a salary of Rs.5,841/- and calculating at the same rate, loss of earnings will be Rs.17,400/- (5800 x 3). As far as MACA No.261/2010 6 hospitalisation, extra nourishment and damage to clothing, transportation and attendant expenses, the Tribunal has granted Rs.4,500/- in total. The appellant will be entitled for award of amounts separately under these heads. As far as pain and suffering is concerned, what is awarded by the Tribunal is Rs.30,000/-. In the light of the fact that he had suffered a major crush injury leading to amputation of his leg and that he had been in hospital on three occasions and that the pain and suffering will be a continuing one, we award an amount of Rs.60,000/- towards pain and suffering. As far as bystander's expenses are concerned, we award @ Rs200/- per day for 37 days which will be Rs.7,400/-. Due to the continuing permanent disability, namely 40%,

he will have to suffer lot of inconvenience in life. The pleasures of life will be affected as his movements will be restricted as he will not be able to travel freely and undertake free movement. For all these inconvenience, difficulties and discomforts in life, we award a total amount of ` 1,00,000/-. The appellant was aged 36 at the time of the accident and the multiplier going by the judgment in Sarla Varma v. Delhi Transport Corporation ( 2010 (2 ) KLT802(SC) will be 15. MACA No.261/2010 7 By taking a monthly income of `5,840/- the compensation towards permanent disability will be ` 4,20,480/- (5840 x 12 x 15 x 40%).

11. The next aspect is the amount to be awarded for future treatment. The appellant who has suffered amputation will have to undertake medical treatment from time to time for different health problems. Recurring problems in such cases is a matter of common knowledge. The Tribunal has already awarded ` 1 lakh towards future treatment including cost of artificial limb. As far as the cost of artificial limb is concerned, what is highlighted by the learned counsel for the appellant is the requirement to award amount at the same rate as shown in the bill he has produced in this appeal. It is submitted by the learned counsel for the Insurance Company that it will be an exorbitant claim, if we adopt the said method. According to us, it may be true that he will have to change the artificial limb periodically for which a lumpsum amount can be granted by this Court. Therefore, considering the future requirements and also in tune with the decision of the Apex Court in Dinesh Singh's case (supra), where a total amount of `5,40,000/- was granted for future treatment and artificial limb, we MACA No.261/2010 8 award a total amount of `2 lakhs under this head.

12. Accordingly, the compensation is refixed as follows : Head of claim Amount Awarded in rupees Loss of earnings 17400 Treatment expenses 153000 Transportation 4500 Pain and suffering 60000 Bystander's expenses 7400 Extra nourishment 3000 Loss of amenities, inconvenience and discomforts 100000 Permanent disability 420480 Future treatment expenses and cost of artificial limb 200000 Total 965780 (Rupees nine lakhs sixty five thousand seven hundred eighty only) 13. The enhanced compensation will carry interest @ 9% per annum from the date of petition. Even though ` 7 lakhs was the total amount claimed before the Tribunal, in the light of the decision in MACA No.261/2010 9 Rajesh

v.Rajbir Singh (2013 (3) KLT89(SC) the appellant will be entitled for the amount which has been arrived at by this Court as just and fair compensation. We hold that the Insurance Company will be liable to satisfy the award in tune with the finding of the Tribunal and the amount with interest will be deposited, less the amount already deposited, within three months and we permit the appellant to withdraw the amount. The court fee payable for the amount fixed by this Court will be recovered by the Tribunal once the amount is thus deposited before the Tribunal. 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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