

Murukesan Vs. Honey Concisso

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Court : Kerala

Decided On : Jun-30-2015

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

Appellant : Murukesan

Respondent : Honey Concisso

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 30TH DAY OF JUNE 2015 9TH ASHADHA, 1937 MACA.No. 368 of 2005 ()
----- AGAINST THE AWARD IN OPMV34031996 of M.A.C.T.,ERNAKULAM DATED 17-02-2004 APPELLANT(S)/PETITIONER IN OPMV: -----

MURUKESAN, S/O.PICHAIMUTHU GOUNDER, SUNDACKALPALAYAM GRAMAM, VEZHAMPETTY POST ARAVAKURICHI (VIA), TARAPURAM TALUK, PERIYAR DIST. TAMIL NADU STATE NOW RESIDING AT VATHURUTHY P.O. COCHIN-29. BY ADV. SRI.VIVEK VARGHESE P.J.

RESPONDENT(S)/RESPONDENTS 1,3,4,5,6:

----- 1. HONEY CONCISSO, W/O.VINCENT CONCISSO, X/1144, CHARMASALA ROAD, SOUTH THAMARAPARAMBU FORT COCHIN, COCHIN-1.

2. THE NEW INDIA ASSURANCE COMPANY LTD., BY ITS REGIONAL MANAGER, REGIONAL OFFICE KANDOMKULATHY BUILDINGS, M.G.ROAD, KOCHI-11 POLICY NO.317607035-4773/3176070335865/ 3176070335876, VALID UPTO2511-1995, ISSUED FROM THOPPUMPADY BRANCH3 GANGADHARAN, MATHA BHAVAN, CHULLICKAL, COCHIN-5.

4. VARGHESE, S.M.COLONY, EROOR NADAMA VILLAGE.

5. ORIENTAL INSURANCE CO LTD., M.G.ROAD, COCHIN-35. R,R2 BY ADV. SRI.N.S.MOHAMMED USMAN R,R5 BY ADV. SRI.MATHEWS JACOB (SR.) R,R5 BY ADV. SRI.P.JACOB MATHEW THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON3006-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: T.R. RAMACHANDRAN NAIR & K.P. JYOTHINDRANATH, JJ.

----- M.A.C.A.No.368 of 2005 -----
----- Dated this the 30th day of June, 2015

JUDGMENT

Jyothindranath, J.

This appeal is preferred by the claimant in O.P.(MV) No.3403/1996 on the file of the Motor Accidents Claims Tribunal, Ernakulam. The appeal is filed challenging the finding of the Tribunal to the effect that the accident occurred due to 20% negligence of the appellant herein as well as challenging the quantum of compensation awarded on various heads.

2. The facts is as follows: On 10.11.1995 at about 5.50 p.m. while the appellant was boarding the bus KL-7/1742 from Deepam bus stop at Ravipuram, the vehicle moved forward and while speeding, the left hand side of the body of the appellant hit against the bus bearing Reg. No.KEF-8110 which was stopped at the bus stop in front of stationery bus bearing KL-7/1742. The appellant filed an application before the Tribunal claiming a total compensation of Rs.5 Lakhs from 2 the owner, driver and insurer of the bus.

3. Even though the Police filed charge sheet against the driver of the bus which is marked as Ext.A3 before the Tribunal, the Tribunal had attributed 20% negligence on the part of the claimant for the cause of the accident. While going through the dictum laid down by a Division Bench of this Court in *New India Assurance Company Ltd. v. Pazhaniammal* (2011 (3) KT648) it can be seen that when the chargesheet is filed against the driver and when there is no positive evidence regarding negligence aspect against the claimant, it can be only concluded that the accident occurred due to the negligence of the driver against whom the charge-sheet is filed. In this case, it is to be remembered that contributory negligence is attributed against the claimant alleging that he was travelling on the footboard. By no stretch of imagination it can be said that the accident occurred due to the negligence of the claimant. Under such circumstances, the finding to the effect that the accident occurred due to 20% negligence of the claimant itself, is hereby set aside. It is found that the accident occurred due to the negligence of the driver of the bus, the second 3 respondent.

4. The next point to be considered is regarding the quantum of compensation awarded. The case of the appellant is that he is aged 47 years who belongs to Periyar District in Tamilnadu. It is the further case of the appellant that he is a manual labourer who is earning a sum of more than Rs.3,000/- per month. He sustained blunt injury on the abdomen. X-ray revealed fracture ala of right sacrum, fracture right pubic ramus (inferior). The exploratory laparotomy revealed rupture of posterior urethra and extensive pelvic haematoma and it can be seen that repair of urethra was done.

5. It can be seen from the evidence that the Urologist advised repeated dilatation. Even though he was initially treated in Medical Trust Hospital, Ernakulam, he continued his treatment in a hospital in Kasipalayam in Tamil Nadu. Ext.A8 shows that there was urinary bladder problems for the appellant and he was having difficulty in passing urine. There is also post-traumatic stricture of urethra and he had undergone visual internal urethrotomy. The doctor opined that the appellant needs life long renal biochemical evaluation and he also 4 requires regular urethral dilatation. The Medical Board assessed the disability at 16%.

6. The appellant sustained very severe injuries and it is apparent that his amenities also will be seriously affected. At the same time, it is to be kept in mind that the accident occurred in the year 1995.

7. Thus, after considering the monthly income at Rs.2,000/- and adopting the multiplier as 9 as held in *Sarla Verma v. Delhi Transport Corporation* (2010 (2) KLT802) the compensation is re-fixed in the following manner: Head of claim Amount awarded by Modified award passed the Tribunal by this Court Transport to hospital 1000 1000 Damage to clothing 500 500 Extra nourishment 2000 3000 Bystander's expense for 6000 (Rs.1500/- x 4) four months 2000 Medical expenses 10500 10500 Loss of earnings for six months 9000 12000 Pain and suffering 10000 35000 Loss of amenities 10000 25000 Loss of earning power 23000 34560 Future medical expenses 10000 Total 137560 5 (Rupees One lakh thirty-seven thousand five hundred and sixty only) The whole compensation amount along with interest at 9% per annum from the date of petition shall be deposited by the second respondent herein who was the third respondent before the Tribunal. The amount shall be deposited within three months and on deposit the appellant shall be entitled to withdraw the same. The appeal is allowed as above. The parties will suffer their costs in the appeal. (T.R. RAMACHANDRAN NAIR, JUDGE.) (K.P.JYOTHINDRANATH,, JUDGE.) kav/

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