

Anil Kumar Vs. Sisupalan and Another

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Court : Kerala

Decided On : Aug-07-2015

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

Appellant : Anil Kumar

Respondent : Sisupalan and Another

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,THE7H DAY OF AUGUST201516TH SRAVANA, 1937 MACA.No. 757 of 2011 ()
----- AGAINST THE AWARD IN OP(MV) 1543/2004 OF MOTOR ACCIDENTS CLAIMS TRIBUNAL, THIRUVANANTHAPURAM DATED1002-2011 APPELLANT/PETITIONER: ----- ANIL KUMAR, S/O. KRISHNAN NAIR EDAPPUZHA VEEDU, EDAKKODE, NEMOM. BY ADVS.SRI.R.T.PRADEEP SRI.V.VIJULAL RESPONDENTS/RESPONDENTS: ----- 1. K. SISUPALAN, PANAYARATHALA VEEDU KALLIYOOR PO, THIRUVANANTHAPURAM695042.

2. THE MANAGER, NATIONAL INSURANCE COMPANY LIMITED BRANCH-11, 2ND FLOOR, K.K.BUILDING ARISTO JUNCTION, THAMPANOOR, THIRUVANANTHAPURAM. PIN695001 R2 BY ADV. SMT.RAJI T.BHASKAR THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD

ON0708-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: SHG/SD T.R. RAMACHANDRAN NAIR & K.P. JYOTHINDRANATH, JJ.

----- M.A.C.A.No.757 of 2011 -----
- - - - Dated this the 7th day of August, 2015

JUDGMENT

K.P. Jyothindranath, J.

This is an appeal preferred by the claimant in O.P. (M.V.)No.1543/2004 on the file of the Motor Accidents Claims Tribunal, Thiruvananthapuram. Challenge is against the quantum of compensation awarded by the Tribunal.

2. The case of the appellant is that he met with a motor vehicle accident on 25.5.2004 at about 10.30 p.m. He sustained very severe injuries including the fracture of shaft of the right femur as well as that of the right clavicle. He was treated as inpatient for more than 25 days. Even though he was an auto driver by profession, only a monthly income of Rs.3,000/- was considered by the Tribunal for the assessment purpose. It is also the submission made before us that it is a case where non-union of fracture with loosening of plate and screws and backing out of K-nail. An Assistant Professor of Orthopaedics attached to the Medical M.A.C.A.No.757 of 2011 -2- College Hospital, Thiruvananthapuram assessed his disability as 33%. But the Tribunal took only 10% disability for assessment purpose. It is the further submission that the compensation awarded on various heads are also insufficient and inadequate.

3. The learned counsel for the Insurance Company submitted before us that no reliable evidence adduced to show the profession of the injured. It is also the submission that the injury is pertaining to only a limb as such the Tribunal took only 10% disability for assessment purpose. There is nothing to interfere with the assessment of the Tribunal. It is the further submission before us that even though he sustained fracture on the femur, there is nothing to show that it affected his profession, if any. Under such circumstances, there is nothing to interfere with the

compensation awarded.

4. This is a case where the appellant sustained fracture shaft of right femur as well as right clavicle. Ext.A4 is the wound certificate and Ext.A5 series are the discharge M.A.C.A.No.757 of 2011 -3- cards and referral O.P. card produced before the Tribunal. There was fracture of right clavicle and fracture of shaft of right femur. He was treated by K-nailing, derotatin plate and bone grafting. The appellant also produced Ext.A6 disability certificate before the Tribunal. The disability certificate state as follows: "Surgical scars on right thigh, iliac crest and gluteal region. There is abnormal mobility of fracture site. There is non union of fracture of femur with loosening of plate and screws and backing out of K nail shortening of 3 cms of right lower limb. Wasting of 2 cm of right thigh and 2 cm of right calf muscles. Patient walks with thigh corset and elbow crutch. There is limping. Movements of right knee painful. Not able to walk fast. Not able to squat. Difficulty in climbing stairs and getting downstairs. Not able to carry weight. Not able to drive autorickshaw. The fracture of right clavicle has malunited with step at fracture site. There is subjective symptoms of pain on use of right upper limb The disability is assessed as below:

1. Pain and mental trauma 2. Temporary disability of 100% for a period of seven months from date of injury.

3. Permanent disability of 33% (Thirty three percent) as per Mc Bride's scale." Thus, we can see that his movements are very much restricted by the fracture sustained to the femur. It can be further seen that there is also a malunited clavicle. When the femur bone was non-united, there is nothing to M.A.C.A.No.757 of 2011 -4- disbelieve that there is a disability of 33%.

5. The case of the appellant is that he is an auto driver by profession. The accident occurred in the year 2004. Even a manual labourer will be getting more than Rs.4,500/- on those days. Thus considering the fact that the appellant is an auto driver by profession and also keeping in mind the accident occurred in the year 2004, it will be only just and proper to take Rs.5,000/- as his monthly income. The appellant at that point of time was aged 34 years. In the light of the judgment in Sarla Varma v. Delhi Transport Corporation [2010 (2) KLT802(SC) the multiplier

will be 16. He was in the hospital for 25 days. A bystander will be necessary on those days. It can be further seen that at the initial period there will be 100% disability. As the fracture is sustained on the femur, seven months period is taken for loss of income during the treatment period. Thus the just compensation is assessed as follows: M.A.C.A.No.757 of 2011 -5- Head of claim Amount re-fixed in Rs. Bystander's expenses 25x200 5000 Loss of earning 5000x7 35000 Transportation 2000 Damage to clothings 500 Medical expenses 4000 Pain and suffering 40000 Permanent disability 5000x33x12x16/100 316800 Loss of amenities 30000 Future treatment 15000 Total 4,48,300 6. The appellant will be entitled for an amount of Rs.4,48,300/- (Rupees four lakhs forty eight thousand three hundred only) 7. The enhanced compensation will carry interest at the rate of 9% per annum from the date of petition till realisation.

8. There will be a direction to the Insurance Company to deposit the amount of compensation with interest, less the amount already deposited, before the Tribunal within a period of three months. On such deposit being made, the appellant will be entitled for the release of M.A.C.A.No.757 of 2011 -6- the amount. Since the claim is only at Rs.2 lakhs, the appellant will have to pay court fee for the amount awarded by this Court over and above the claim, which will be recovered by the Tribunal once 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 //True copy// P.A. TO JUDGE shg/

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