

Abhayadev Vs. Kunjumon

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Court : Kerala

Decided On : Dec-12-2014

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

Appellant : Abhayadev

Respondent : Kunjumon

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR & THE HONOURABLE SMT. JUSTICE P.V.ASHA FRIDAY, THE 12TH DAY OF DECEMBER 2014 21ST AGRAHAYANA, 1936 MACA.No. 2707 of 2012 () ----- AGAINST THE AWARD IN OPMV2882005 of MACT ALAPPUZHA DATED 10/11-2010 APPELLANT(S)/APPELLANT: ----- ABHAYADEV S/O. SIDHARTHAN, PUTHENTHARA VEEDU, C.M.C. 5 CHERTHALA, ALAPPUZHA. BY ADV. SRI.T.B.SARASAN RESPONDENT(S):RESPONDENTS ----- 1. KUNJUMON S/O. VARKEY CHACKO, ASSARIPARAMBIL VEEDU, C.M.C. 7 CHERTHALA-688 524.

2. JAYARAM THAYCHIRA VEEDU, VARANAM POST, CHERTHALA-688 555.

3. THE UNITED INDIA INSURANCE CO. LTD. REPRESENTED BY ITS BRANCH MANAGER ALLEPPEY-688 001. R3 BY ADV. SMT.D.GEETHA R3 BY ADV.

SMT.K.SHERIN MOHAN R BY SRI.JOHN JOSEPH VETTIKAD THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON1212-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: T.R.RAMACHANDRAN NAIR & P.V ASHA, JJ.

----- M.A.C.A No.2707 of 2012
----- Dated this the 12th day of December,
2014

JUDGMENT

Ramachandran Nair, J.

This appeal is filed by the appellant/injured in a motor vehicle accident. The accident occurred on 26.03.2003 at about 10.30 a.m on the Cherthala-Arookutty road near Government High School, Cherthala. He was travelling in an autorickshaw driven by the 1st respondent which overturned on applying brake after seeing a dog crossing the road.

2. Evidence was given by the petitioner in support of the application. Exts.A1 to A9 have been marked.

3. The learned counsel for the appellant submitted that as against the total claim of Rs.2,26,000/-, only Rs.1,03,124/- is granted. As a result of the accident, the appellant who was employed as a Coir Weaving Worker, is unable to perform the said job. Therefore the compensation should have been awarded commensurate with the disability sustained by him including functional disability. It is also submitted that for loss of M.A.C.A No.2707 of 2012 2 amenities of life as well as other items of general damages, the Tribunal has not properly awarded compensation. It is also submitted that the period of treatment including outpatient treatment spread over to 7 months and this fact should have been considered.

4. Going by the details of the injuries sustained by him, they are: "Abrasion 10X6 cms inner aspect of middle 1/3rd right leg, lacerated wound 3 X2cms on the right medial malleolus, abrasion 2 X2cms inner aspect right heel, fracture both bones right leg." 5. He was examined as PW1 before the Tribunal. He explained before

the Tribunal that he is unable to walk properly and due to pain on his leg, he is unable to stand for more than ten minutes at a time. He is not able to weave coir mats as he was doing the work before. The learned counsel submitted that the disability assessed includes shortening of right leg by two inches. The ankylosis he has suffered is causing acute pain and this has made difficulties for him to work as a weaver as before the accident.

6. It is also submitted that even though the appellant produced before the Tribunal Ext.A9 to show his monthly income M.A.C.A No.2707 of 2012 3 as Rs.4,500/-, it was not accepted by the Tribunal since the employer was not examined. But at the same time, the learned counsel for the appellant submitted that since there cannot be any dispute regarding his occupation, a reasonable monthly income ought to have been accepted by the Tribunal rather than taking a low figure like Rs.2,500/- per mensem. It is submitted that the activity namely, weaving of coir is a regular one in that district especially in Alappuzha, Cherthala and nearby places and therefore he was getting regular work also.

7. The learned counsel for the Insurance Company submitted that the income claimed is on a higher side.

8. Having considered the various aspects, we are of the view that since the accident is of the year 2003, his income can easily be reckoned at Rs.3,000/- per mensem. The appellant is therefore entitled to compensation accordingly. Apart from the same, the Tribunal has granted only Rs.20,000/- for pain and suffering. The treatment undergone by him will show that various procedures have been undertaken. He was initially brought to the Taluk Head Quarters Hospital, Cherthala, from where he was referred to the Medical College Hospital, Alappuzha. He had undergone treatment from 26.03.2003 to M.A.C.A No.2707 of 2012 4 14.04.2003 as an inpatient there on the first occasion and on the second spell he was treated as an inpatient from 12.05.2003 to 28.05.2003. It is also submitted that the documentary evidence will show that plaster cast was removed only on 13.10.2003.

9. Considering the seriousness of injuries and the details of the treatments undergone by the appellant, we are of the view that the compensation awarded

towards pain and suffering requires enhancement. We grant an amount of Rs.35,000/- towards pain and suffering. As far as the disability aspect and the consequent loss of amenities of life and loss of enjoyment of life, the forceful argument by the learned counsel for the appellant, going by the facts of the case, is justified. Because of the shortening of the leg and ankylosis, it will be difficult for him to perform his normal avocations as was being performed before the accident. Therefore, we find it appropriate to grant an amount of Rs.35,000/- towards loss of amenities and loss of enjoyment of life. We refix the bystander expenses at Rs.150/- per day for 37 days, instead of Rs.100/- per day. The Tribunal has granted the compensation in the following manner: M.A.C.A No.2707 of 2012 5

Sl.No.	Head of claim	Amt.
1	Compensation for loss of earning	Rs. 15,000.00
2	Treatment expenses	Rs. 1,624.00
3	Transportation charges	Rs. 2,500.00
4	Extra nourishment	Rs. 1,000.00
5	Damage to clothing	Rs. 300.00
6	Bystander expenses	Rs. 3,700.00
7	Compensation for pain and suffering	Rs. 20,000.00
8	Compensation for disability	Rs. 54,000.00
9	Compensation for loss of amenities	Rs. 5,000.00
Total		Rs.1,03,124.00

10. We refix the compensation as shown below:

Sl.No.	Head of claim	Amt.
1	Compensation for loss of earning(Rs.3500X9)	Rs. 31,500.00
2	Treatment expenses	Rs. 1,624.00
3	Transportation charges	Rs. 2,500.00
4	Extra nourishment	Rs. 1,000.00
5	Damage to clothing	Rs. 300.00
6	Bystander expenses (Rs.150 x 37)	Rs. 5,550.00
7	Compensation for pain and suffering	Rs. 35,000.00
8	Compensation for disability	Rs. 75,600.00
9	(3500X12X15X12/100) Compensation for loss of amenities & enjoyment of life	Rs. 35,000.00
Total		Rs.1,88,074.00 rounded off to Rs.1,88,100.00 (Rupees One lakh eighty eight thousand and one hundred only)

M.A.C.A No.2707 of 2012 6 Accordingly the appellant is entitled for a total compensation of Rs.1,88,100/- (Rupees One lakh eighty eight thousand and one hundred only), which will carry interest @ 9% per annum. The Insurance Company is directed to deposit the amount within a period of 3 months and on such deposit being made, the appellant can withdraw the amount. The appeal is allowed accordingly. No costs. Sd/- T.R.RAMACHANDRAN NAIR Judge Sd/- P.V.ASHA Judge rtr/ /true copy/ P.S to Judge