

(2015) 05 KL CK 0117
In the High Court Of Kerala
Case No : M.A.C.A. No. 537 of 2009

Sameer Babu

APPELLANT

Vs

Ahammed Usman Pari and Others

RESPONDENT

Date of Decision : 22-05-2015

Acts Referred:

Citation : (2015) 05 KL CK 0117

Hon'ble Judges : T.R. Ramachandran Nair, J;K.P. Jyothindranath, J

Bench : Division Bench

Advocate : A.V.M. Salahudin, for the Appellant

Final Decision : Allowed

Judgement

T.R. Ramachandran Nair, J—The appellant who was a 15 year old boy at the time of accident has come up before this court seeking enhancement of compensation. As against the total claim of Rs. 2 lakhs the Tribunal has awarded an amount of Rs. 77,421/-.

2. Heard both sides.

3. A narration of the facts will be necessary to assess the physical disability of the appellant. The accident occurred on 11.02.2000 at 9.15 a.m. He was riding a bicycle from Amayoor to Karakkunnu school and the accident spot is near Anakottupuram road. The offending vehicle, a car bearing registration No. KL-10/E-8485 hit the appellant and he was thrown away on the road and sustained serious injuries. He was taken to the Medical College Hospital, Calicut for treatment.

4. The medical reports have been produced in evidence and Ext.A3 is the certificate issued from the Department of Physical Medicine and Rehabilitation, Medical College, Calicut. The said certificate would show that he was treated as inpatient in the Medical College Hospital from 11.02.2000 to 26.04.2000 as I.P. No. 7839. When he was admitted in the surgery ward he had traumatic brain

injury and left hemiplegia, fracture mandible and fracture neck of left radius. Then he was transferred to the Physical Medicine Department for rehabilitation. He was readmitted on 23.09.2000 and was discharged on 17.10.2000.

5. Ext.A4 is the O.P. Ticket and Ext.A5 is the Treatment Book. Ext.A5 shows that he was admitted on 11.02.2000 and discharged on 26.04.2000. It is stated that he continued his treatment up to 25.09.2006. Ext.A6 and Ext.A7 are two C.T. scan reports. The evidence will therefore prove that he was treated continuously for a long period. Ext.X1 is the case sheet and Ext.X2 is the disability certificate. We have gone through the disability certificate, wherein it is recorded that he is having minimal spasticity and weakness of (L) upper and lower limb following traumatic brain injury. The percentage of permanent disability is noted as 15. Going by the evidence he was a student in 10th standard. The Tribunal has granted compensation under different heads as shown below:

6. The learned counsel for the appellant vehemently prayed for enhancement of compensation.

7. For the purpose of assessing the percentage of permanent disability the Tribunal has taken the annual income as Rs. 15,000/- being a student. The accident occurred in the year 2000. We are of the view that the amount fixed for assessing the compensation is too low and it is justifiable in taking the monthly income at least at the rate of Rs. 3,000/-. The multiplier going by the table provided in the decision of the Apex court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, (2009) ACJ 1298 : AIR 2009 SC 3104 : (2009) CLT 1055 : (2009) 6 JT 495 : (2009) 6 SCALE 129 : (2009) 6 SCC 121 : (2009) 5 SCR 1098 : (2009) 5 UJ 2280 : (2009) AIRSCW 4992 : (2009) 3 Supreme 487 will be 15. The compensation towards permanent disability therefore will be Rs. 81,000/-. We also are of the view that towards the bystander's expenses what is granted by the Tribunal is at the rate of Rs. 100/- per day which we enhance to Rs. 150/- per day for 100 days and the same will be Rs. 15,000/-. For pain and suffering what is granted by the Tribunal is Rs. 15,000/-. He had suffered serious injuries and had been under continuous treatment for a period of 98 days. The appellant being a minor would have suffered much pain and difficulties due to the injury sustained and the treatment undertaken. Therefore, we enhance the same to Rs. 35,000/-.

8. For loss of amenities in life what is granted by the Tribunal is Rs. 5,000/- only. There is permanent disability of 15% going by the disability certificate. The major injury sustained by him is brain injury also. The weakness of lower and upper limb have been recorded by the medical board. Therefore, it will affect his normal activities and his capacity to lead a normal life, to an extent. Therefore, we enhance the amount towards loss of amenities and loss of enjoyment in life to Rs. 50,000/-. The total compensation therefore will be Rs. 1,94,671/-, which we rounded off to Rs. 1,94,670/-. The enhanced compensation will carry interest at the rate of 9% from the date of petition till realisation.

9. Accordingly, we refix the compensation as shown below:

10. There will be a direction to the Insurance Company to deposit the amount of compensation, less the amount already deposited, before the Tribunal within a period of three months and we permit the claimant to withdraw the amount when the amount is deposited by the Insurance Company.

The appeal is accordingly allowed. There will be no order as to costs in the appeal.