
(2011) 03 KL CK 0186
In the High Court Of Kerala
Case No : MACA. No. 2090 of 2010

Vasudevan

APPELLANT

Vs

V.M. Moideenkutty, The New India Assurance Co.Ltd,
Komalam and Vijith

RESPONDENT

Date of Decision : 22-03-2011

Acts Referred:

Citation : (2011) 03 KL CK 0186

Hon'ble Judges : P.Q. Barkath Ali, J;A.K. Basheer, J

Bench : Division Bench

Advocate : P.K. Mohanan Palakkad, for the Appellant; Viju Thomas, for the Respondent

Judgement

A.K. Basheer, J.—Appellant was knocked down by a vehicle bearing Reg. No. KL9F 8728 while he was walking through the side of the road on July 6, 2006. He sustained "burst fracture D12 with Cord Compression and also fracture bilateral lamina and facet disruption". Ext.A9, discharge summary issued by the Jubilee Mission Medical College and Research Institute at Thrissur gave the final diagnosis at the time of his discharge as hereunder:

Burst fracture D12 with Cord compression and paraparesis.

2. At the time of discharge, it was stated in Ext.A9 that "the prognosis for motor function of the lower limbs and sphincter function is guarded". This certificate was issued on July 19, 2006.

3. The Tribunal, after considering the documentary evidence adduced by the Appellant, awarded a sum of Rs. 88,250/- under various heads. But no compensation under the head of disability was awarded, since the Appellant did not produce any disability certificate. Significantly the Appellant was also not examined in the court.

4. It is contended by the learned Counsel that the Appellant is bed ridden without

any mobility in the lower part of his body. Undoubtedly, Ext.A9 discharge summary gives a clue about the condition of the Appellant. But the counsel for the Appellant ought to have taken steps to ensure that necessary evidence was adduced to enable the Tribunal to get a clear picture of the state of affairs. Learned Counsel for the Appellant made a fervent plea before us to give a further opportunity to the Appellant to adduce further evidence before the Tribunal. It has to be noticed that the claim petition has been pending before the Tribunal since 2006 and it was disposed of only in March 2010. But no steps were taken to adduce any satisfactory evidence in order to substantiate the claim made by the Appellant.

5. However, keeping in view the nature of the injuries and having regard to the entire facts and circumstances of the case, we are of the view that the Appellant can be granted a further opportunity to adduce additional evidence in the matter, but of course on terms. The impugned award shall stand set aside on condition that the Appellant pays a sum of Rs. 5,000/- as cost to the insurance company. The cost shall be deposited before the Tribunal on or before April 15, 2011 failing which the appeal will stand dismissed.

If the cost is paid, the Tribunal shall pass a fresh award after affording sufficient opportunity to both sides to adduce further evidence in the matter. The parties shall appear before the Tribunal on April 18, 2011.