

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

MONDAY, THE 14TH DAY OF DECEMBER 2015/23RD AGRAHAYANA, 1937

MACA.No.429 of 2005 (A)

AGAINST THE AWARD IN OP(MV) 1465/1998 of M.A.C.T., ATTINGAL
DATED 17-10-2003

APPELLANT/APPLICANT:

SUDHAKARAN,
S/O.RAMSWAMI,
MAVILA VEEDU, NELLICAUDE, PUTHIYAKAVU
KILLIMANOOR P.O., TRIVANDRUM (DISTRICT).

BY ADV. SRI.C.R.SIVAKUMAR

RESPONDENTS : RESPONDENTS :

1. SUDHAN, S/O.MANI,
KUZHIVILA MULAMKUNNIL VEEDU, CHARUPARA P.O.,
CHITTALAZHIKAM, KILLIMANOOR, TRIVANDRUM DISTRICT.
2. THE UNITED INDIA INSURANCE COMPANY LIMITED,
BRANCH OFFICE, ATTINGAL REPRESENTED BY
THE MANAGER.

R2 BY ADV. SRI.MATHEWS JACOB (SR.)

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON
14-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

MACA.No.429 of 2005 (A)

APPENDIX

APPELLANT'S ANNEXURE :-

ANNEXURE I : MEDICAL CERTIFICATE DTD.2.12.2004.

RESPONDENTS' ANNEXURE :- NIL.

True copy

P.A to Judge

P.R.RAMACHANDRA MENON & ANIL K.NARENDRA, JJ.

M.A.C.A.No.429 of 2005

Dated this the 14th day of December, 2015

JUDGMENT

Ramachandra Menon, J.

The plight of an able bodied youth of 28 years, who, after obtaining an 'advise memo' from the PSC to be appointed as a Police Constable, was later denied employment based on a medical report that he was unfit to join the service as a Police Constable, because of the injuries sustained in a road traffic accident, is 'portraited' in this appeal.

2. The accident was on 4.6.1998. The appellant was proceeding on a bicycle and at about 9 p.m., when he was knocked down by an autorickshaw bearing No.KL.01/K-5388 owned and driven by the 1st respondent which was insured by the 2nd respondent, causing serious injuries. The appellant contended that much adverse circumstance were resulted because of the accident and that he lost the Government job, which hence was sought to be compensated by filing the Claim Petition. The appellant himself was examined as PW.1, besides examining

another witness as PW.2. The documents produced before the Tribunal are Exts.A1 to A14. It is seen from the award, that no violation of the statutory/policy condition was available and hence the matter was sought to be contested by the respondent/Insurance Company on general grounds. There is an observation by the Tribunal in paragraph 3 of the Award, that the respondents did not file any written statement, though cross-examined the witnesses. The learned counsel for the respondent/insurance company submits that a written statement was actually filed. But in so far as there is no case as to the violation of any statutory/policy condition, no further probe is required in this regard; but for considering quantum of compensation payable.

3. The injuries sustained by the appellant as given in paragraph 7 of the award are in the following terms:-

"The injuries allegedly sustained by the petitioner are 'L' shaped laceration medial bound skin deep 7x5 cms over the right patella, and Quaddripped contusion, fracture

confirmed. The respondents have not adduced any evidence. The petitioner has given evidence as P.W.1 to prove the injuries and P.W.2 the Doctor was examined to prove the disability. According to P.W.1 he has sustained injuries to his leg and was treated from CHC, Kesavapuram and from the MCH, Trivandrum. The operation was conducted on the right leg and plaster applied. He was admitted for 7 days in the hospital and the plaster was removed after one month. Thereafter he has done the physiotherapy and Ayurveda treatment. According to P.W.1 due to this injury sustained and the disability caused, he could not join in the post of police constable for which he was advised for appointment from P.S.C. petitioner has produced the disability certificate obtained by him. Ext.A5 is the wound certificate which proved the 'L' shaped lacerated injury medially bound skin deep 7x5 cm over Pattella as alleged and contusion forearm. Ext.A6 is the referral O.P. card which proved fracture lateral condyle right femur and hospitalisation. Ext.A7 is the physiotherapy O.P. ticket which proved that the petitioner has gone for physiotherapy more than 25 times.

Ext.A8 is the treatment certificate which proved hospitalisation for 7 days and the fracture of femur as alleged.”

4. The amounts awarded by the Tribunal under different heads are extracted below:-

Pain and sufferings	₹15,000/-
Transport to hospital	500/-
Extra nourishment	2,000/-
Damage to clothing	500/-
Hospitalisation and treatment	2,000/-
Loss of earning	3,000/-
Disability compensation (1800x12x18x5/100)	19,440/-

Total	₹42,440/-
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5. The case presented by the appellant before the Tribunal was that he was a tailor by profession at the time of the accident and was having a monthly income of ₹4,000/-; despite which the Tribunal reckoned only a sum of ₹1,800/- as the monthly income. Similarly, the injuries resulted in a disability to an extent of 8% as certified in Ext.A14; despite which the Tribunal reckoned only 5%. It is stated that only meagre

amounts have been awarded under different heads and no amount has been awarded under several other solid heads like loss of amenities and enjoyment of life, loss of employment after the selection and advise memo issued by the P.S.C, etc.

6. After hearing both the sides, we find that the specific pleading of the appellant that he had come out successful in the selection conducted by the PSC for appointment to the post of Police Constable stands vindicated as per Ext.A9 'advise memo' issued by the PSC. Pursuant to Ext.A9, the appellant was instructed to report before the concerned authorities as per Ext.A10. Ext.A11 is the medical report, which holds that, by virtue of nature and extent of injury, the claimant was unfit to be appointed as a Police Constable. It was pursuant to this, that Ext.A12 communication was issued by the PSC intimating the fate, thus denying the chance to be appointed as Police Constable, forever.

7. When the matter came up for consideration before this Court earlier, on noticing the inconsistency with regard to the

contents of the certificates and extent of disability, we found it appropriate to cause the appellant to be examined by a fresh Medical Board. Pursuant to the said proceedings, the disability of the appellant was assessed by the Medical Board constituted by the Superintendent of General Hospital, Thiruvananthapuram and a report (Standing Disability Assessment Board Certificate dated 26.9.2015) has been forwarded to this Court certifying the permanent whole body disability as 8%. We accept the same.

8. It is true, that no documentary evidence was produced to prove the income. But the specific case of the appellant was that, he was working as a 'tailor' at that point of time. The income reckoned by the Tribunal as ₹1,800/- per month appears to be on the lower side. We find it appropriate to have the same enhanced to ₹2,500/-. The loss of income compensated by the Tribunal is only to an extent of ₹3,000/-. Considering the nature and extent of injuries, we find that four months' rest was necessary for the appellant and we award a sum of ₹10,000/- under this head. After giving credit to a sum of ₹3,000/- awarded

by the Tribunal, the balance comes to **₹7,000/-**. The Tribunal has awarded only a sum of ₹19,440/- towards disability, reckoning the disability as 5%. On reworking the figures reckoning 8% disability as certified by the Medical Board, it comes: $₹2,500 \times 12 \times 8/100 \times 17$ (being the appropriate multiplier as per **Sarla Verma's** case reported in **Sarla Verma (Smt) & Ors. Vs. Delhi Transport Corporation & Anr. (2010 (2) KLT 802)**)=₹40,800/-. After deducting the sum of ₹19,440/- already awarded by the Tribunal, the balance comes to **₹21,360/-**. It is seen that no amount has been awarded towards loss of amenities and enjoyment of life. The appellant was an able bodied youth of 28 years and has a long way to go. Considering the facts and circumstances, we award a sum of **₹25,000/-** under this head.

9. Another important aspect to be looked into, is with regard to the liability to compensate the appellant with regard to loss of employment. Both oral and documentary evidences have been adduced by the appellant, as to the process of selection

conducted by the PSC, advise memo given and subsequent consequences as to denial of employment based on Ext.A11 medical report, as conveyed by the PSC vide Ext.A12. There is absolutely no fault on the part of the appellant and the Tribunal has found that the accident was only because of the negligence on the part of the driver of the autorickshaw insured by the 2nd respondent. This being the position, it is very much necessary to provide adequate compensation in respect of the loss of employment and the further chance to obtain similar employment. We find that a sum of **₹50,000/-** under this head will satisfy the said requirement, taking note of the facts and circumstances including the economic conditions prevailing as on the date of accident occurred in the year 1998.

10. In the above circumstances, the total balance compensation payable to the appellant comes to **₹1,03,360/-** (₹7,000/- + ₹21,360/- + ₹25,000/- + ₹50,000/-) which shall be satisfied with interest @ 9% per annum from the date of petition filed before the Tribunal, till the date of realisation. Since the

policy is admitted, we direct the insurance company to deposit the said amount within one month from the date of receipt of a copy of this judgment.

The appeal is disposed of accordingly.

Sd/-

P.R.RAMACHANDRA MENON, JUDGE

Sd/-

ANIL K.NARENDRA, JUDGE

skj

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P.A to Judge