

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR.JUSTICE K.HARILAL

THURSDAY, THE 3RD DAY OF SEPTEMBER 2015/12TH BHADRA, 1937

MACA.No. 584 of 2006 ()

AGAINST THE AWARD IN OPMV 350/1998 of MACT,WAYANAD,KALPETTA
DATED 15-10-2004

APPELLANT/PETITIONER:

NABEEB (MINOR), AGED 12 YEARS,S/O.UMMER,
REPRESENTED BY HIS NEXT FRIEND GUARDIAN FATHER
UMMER, AGED 48 YEARS, S/O.CHEKKU,
VELLAMKULATH HOUSE, ILLATHUMoola, MANANTHAVADY.P.O.

BY ADV. SRI.N.J.ANTONY

RESPONDENT(S)/RESPONDENTS:

1. ABDUL AZEEZ, K.P.,S/O.MAMMU,
ERANHIPALAM, KOZHIKODE.

2. ABDUL AZEEZ.S,
S/O.SAIDALAVI, PARAMBIL HOUSE, ARIDIYALKUNNU.P.O.,
PULICKAL, MALAPPURAM DISTRICT.

3. NEW INDIA ASSURANCE CO. LTD.,
KALPETTA.

4. V.K.MUHAMMED,
S/O.CHACHU, ERUMATHERUVE, MANANTHAVADY.

5. K.ABOO,
S/O.KUNHAYIN, PUTHENTHERUVIL HOUSE, THAMMENPOYIL.P.O
THAMARASSERY, KOZHIKODE.

R3 BY ADV. SRI.VPK.PANICKER

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY
HEARD ON 03-09-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

OKB

P.R. RAMACHANDRA MENON & K. HARILAL, JJ.

M.A.C.A.No.584 of 2006

Dated this the 3rd day of September, 2015.

JUDGMENT

Ramachandra Menon, J.

Insufficiency of the compensation awarded by the Tribunal in respect of the injuries sustained by the appellant in a road traffic accident occurred on 10.4.1998 made the injured to approach this Court by filing this appeal, claiming enhancement.

2. On the date of occurrence, the appellant herein was a minor, who was travelling in the jeep bearing No.KLM-4671. While so, there occurred a collision between the said jeep and a lorry driven by the 1st respondent, owned by the 2nd respondent and insured by the 3rd respondent, causing serious injuries, which were sought to be compensated by filing a claim petition before the Tribunal through the father as the next friend of the minor claimant. The 4th and the 5th respondents were the driver and owner of the jeep.

The 1st and the 5th respondents chose to remain ex parte, while the 2nd and the 4th respondents, though entered appearance, did not file any written statement. The existence of a valid coverage of insurance policy was disputed by the Insurance Company by filing a written statement insofar as the offending lorry was involved. The injured was examined as P.W.1 and reliance was sought to be placed on Exts.A1 to A6 & A7 series. No witness was examined from the part of the respondents, nor was there any document produced on their side. On completion of the evidence, the Tribunal arrived at a finding that the accident was only because of the negligence on the part of the driver of the lorry. Considering the nature and gravity of the injuries sustained, as discussed in paragraph 9 of the award, amounts were awarded under different heads; which comes to a total of Rs.44,500/-. However, considering the fact that existence of valid policy was not established, the Insurance Company was exonerated and the liability was mulcted upon the shoulders of the driver and the owner of the vehicle.

The adequacy of the compensation is under challenge in this appeal as mentioned already.

3. Heard the learned counsel for the appellant as well as the learned counsel appearing for the Insurance Company.

4. After hearing both the sides, this Court finds that the award passed by the Tribunal was based on the available materials on record and, as such, the same is not liable to be branded as arbitrary or unreasonable in any manner. The relevant aspects have been considered by the Tribunal and the fixation of compensation is to be considered with reference to the money value as it existed on the date of accident, i.e., on 10.4.1998. The injured was only a student of the 7th standard and was not an earning member, despite which a sum of Rs.30,000/- has been awarded by the Tribunal towards disability. This being the position, no interference is warranted on merits.

5. Another aspect to be noted is that the appellant herein was a minor of 12 years at the time of accident occurred on 10.4.1998. The appellant attained

majority in the year 2004. The appeal has been filed by the father of the injured acting in his capacity as the “next friend”. Treating the appellant as still a minor, the appeal was filed in the year 2006, despite the fact that the injured had already become a major by that time. As such, the father of the injured was not competent to have the injured represented by filing any appeal on his own. The appeal has not been filed in the capacity as the power holder of the injured, on the strength of any Power of Attorney. As such, the present appeal is not liable to be treated as a valid appeal preferred by the party concerned, i.e., the injured, who was already a major having attained majority way back in the year 2004. Interference is liable to be declined on this ground as well.

In the above circumstances, the appeal stands dismissed.

Sd/—

P.R. RAMACHANDRA MENON, JUDGE

Sd/—

K. HARILAL, JUDGE

okb.