

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

TUESDAY, THE 17TH DAY OF MARCH 2015/26TH PHALGUNA, 1936

MACA.No. 632 of 2012 ()

AGAINST THE AWARD IN OPMV.NO.190/2006 of MACT, IRINJALAKUDA,
DATED 12-10-2009

APPELLANT/PETITIONER IN OP (MV) :-

SUPRIYA (MINOR), AGED 11 YEARS
D/O.SURAJ, (MINOR) REPRESENTED BY ITS GUARDIAN
VENGANIKADAN HOUSE, ULUDABATHKUNNU DESOM
NELLAYAIVILLAGE.

BY ADV.SMT.SADHANA KUMARI ESWARI

RESPONDENTS/RESPONDENTS:-

1. ABILASH,
(OWNER OF THE CAR), S/O.PUMBAMKKATTIL ASHOKAN
PUTHUR.P.O, THRISSUR, PIN-680014.

2. MANIKANDAN.K,
(DRIVER OF THE CAR), S/O.KIZHAKKOOTIL BALAN KAIMAL
PANAMUCKU, THRISSUR-680014.

3. THE MANAGER,
(INSURER IN THE CAR), NEW INDIA INSURANCE CO.LTD
THRISSUR.

R3 BY ADV. SRI.VPK.PANICKER

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 17-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Kvs/-

P.B.SURESH KUMAR, J.

M.A.C.A.No.632 of 2012.

Dated this the 17th day of March, 2015.

J U D G M E N T

The claimant in a petition for compensation before the Motor Accidents Claims Tribunal has come up in this appeal challenging the quantum of compensation granted by the Tribunal.

2. The claimant was seven years old at the time of accident. The accident took place on 30.3.2005. A sum of Rs.50,000/- was claimed in the petition by way of compensation. The Tribunal, on an appraisal of the materials on record, found that the claimant is entitled to only a sum of Rs.25,700/- and accordingly, an award was passed for the said amount. As the vehicle involved in the accident was covered by a valid insurance policy at the time of accident, the insurer was directed to satisfy the award. The claimant is aggrieved by the said award and hence this appeal.

3. Heard the learned counsel for the claimant and the learned counsel for the insurer.

4. Ext.A2 is the wound certificate issued to the claimant by the Doctor who has examined her immediately after the accident. Ext.A3 is the discharge card issued to the claimant from St.James Hospital, Chalakudy. The Tribunal found that the claimant was admitted and treated in the said hospital for diffused axonal injury. Ext.A4 is the certificate issued by one Dr.P.V.Sugathan certifying the disability of the claimant at 13%. Ext.A4 reads thus:

"This is to certify that Kum.Supriya, 11 years, is examined by me, who had RTA on 30.3.2005 and treated at St.James Hospital, Chalakudy, sustaining head injury - Diffuse axonal injury, had weakness of the Rt upper limb and diminished cognitive functions.

Now on examination, she is found to have memory impairment and minimal behavior abnormality of permanent nature amounting to a total permanent impairment of learning and memory + cognitive functions – as per MMR-Scale & WHO Neurological deficit criteria is $4+4+5 = 13\%$ percentage of therefore, after clinical examination & case summary evaluation of the disease and the discharge card."

The Tribunal did not accept Ext.A4 certificate for the reason that the disability was not proved. The Tribunal also found that the reasons based on which the Doctor who issued

Ext.A4 certified the disability of the claimant at 13% are not discernible from the certificate. Consequently, the Tribunal determined the compensation payable to the claimant ignoring Ext.A4 certificate.

5. It is seen that other than the reimbursement of medical expenses incurred by the claimant and the minimum compensation paid towards transportation expenses, bystander's expenses etc., only a sum of Rs.15,000/- is seen granted to the claimant by way of compensation for the injuries and the disability sustained by her in the accident. True, Ext.A4 certificate produced by the claimant has not been proved by examining the Doctor who has issued the same. It is also not discernible from Ext.A4 as to how the Doctor came to the conclusion that the claimant is suffering from 13% disability. However, in view of the recital in Ext.A4 that the claimant is suffering from memory impairment and minimal behavior abnormality of permanent nature, I am of the view that the claimant shall be given an opportunity to establish the disability, if any,

sustained by her on account of the accident.

6. In the circumstances, the impugned award is set aside and the Tribunal is directed to consider the claim petition afresh, after affording the claimant an opportunity to adduce further evidence. Since the claim petition is of the year 2006, I deem it appropriate to direct the Tribunal to dispose of the claim petition within six months from the date of receipt of a copy of the judgment. The parties are directed to appear before the Tribunal on 16.4.2015.

The appeal is allowed as above.

Sd/-
P.B.SURESH KUMAR, JUDGE.

Kvs/-

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PA TO JUDGE.