

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

MONDAY, THE 9TH DAY OF MARCH 2015/18TH PHALGUNA, 1936

MACA.No. 2439 of 2013 ()

OPMV 2057/2005 of M.A.C.T., NEYYATTINKARA

APPELLANT/APPLICANT:-

S.SABIN, AGED 17 YEARS
SAJIN BHAVAN, KANAVILA ROADARIKATHU VEEDU
PERUMPAZHUTHOOR P.O., NEYYATTINKARA
(MINOR) REPRESENTED BY FATHER AND NATURAL GUARDIAN STUVART RAJ
DO-DO.

BY ADV. SRI.L.MOHANAN

RESPONDENTS/RESPONDENTS:-

1. JOSE FRANKLIN,
JOSE NIVAS, NEAR VANITHA JAIL, PERUMPAZHUTHOOR
PERUMPAZHUTHOOR P.O., NEYYATTINKARA. 695 126
2. ANIL KUMAR ,
S/O.ALBERT, KUZHIVILA VEEDU, PULLOORKONAM
PERUMPAZHUTHOOR P.O. 695 126.
3. UNITED INDIA INSURANCE CO.LTD.,
DIVISIONAL OFFICE, L.M.S. COMPOUND, PALAYAM
THIRUVANANTHAPURAM. 695 003.

R3 BY ADV. SRI.T.J.LAKSHMANAN IYER
R3 BY ADV.SRI.JOHN JOSEPH VETTIKAD

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

P.B.SURESH KUMAR, J.

M.A.C.A. No.2439 of 2013

Dated 9th 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 a boy aged 10 years at the time of accident. The accident took place on 18.5.2005. A sum of Rs.1,00,000/- 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.7,000/- 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.

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

4. Exts.A2 and A3 are the only medical records produced by the claimant. Ext.A2 is the casualty OP card issued from Taluk Hospital, Neyyattinkara. Ext.A3 is the copy of the wound certificate. In Ext.A3, suspected fracture of both bones of left forearm is noted. Ext.A2 casualty OP card does not indicate that the fracture was confirmed in the investigation. What is discernible from Ext.A2 is only that X-ray was done on the claimant and was referred to the Orthopedic Department.

5. The Tribunal, though took note of the fact that the claimant had suspected fracture of both bones of left forearm, did not grant any compensation for the fracture sustained by the claimant for the reason that the medical records produced by the claimant are not sufficient to hold that the claimant had sustained fracture of both bones of his left forearm, as claimed by him. It is in the said circumstances, the compensation payable to the claimant was limited to Rs.7,000/-.

6. True, the documents produced by the claimant

do not indicate that the claimant had sustained fracture of both bones of his left forearm as claimed by him. It is seen that sufficient materials were not placed by the claimant before the Tribunal to enable the Tribunal to grant just compensation for the injuries sustained by him in the accident. Since the claimant is a victim of a motor accident, I am of the view that he has to be granted a further opportunity to substantiate his case before the Tribunal so as to enable him to claim just compensation for the injuries sustained by him.

In the result, the impugned award is set aside and the Tribunal is directed to decide the claim petition afresh, after affording the claimant an opportunity to adduce evidence.

Sd/-

P.B.SURESH KUMAR, JUDGE.

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(true copy)