

Kerala High Court

M.N.Unni vs The Secretary on 11 November, 2009

IN THE HIGH COURT OF KERALA AT ERNAKULAM

MACA.No. 1484 of 2009()

1. M.N.UNNI, AGED 58 YEARS,
... Petitioner

Vs

1. THE SECRETARY, CORPORATION OF COCHIN
... Respondent

2. R.SANKARAN, S/O.RAGHAVAN,

3. THE NATIONAL INSURANCE COMPANY LTD

For Petitioner :SRI.ANIL S.RAJ

For Respondent :SRI.E.D.GEORGE

The Hon'ble MR. Justice M.N.KRISHNAN

Dated :11/11/2009

O R D E R

M.N. KRISHNAN, J.

.....
M.A.C.A.No.1484 OF 2009

.....
Dated this the 11th day of November, 2009

J U D G M E N T

This is an appeal preferred against the award of the Claims Tribunal, Ernakulam in OP(MV)No.3020/2002. The claimant, an employee of the FACT, sustained injuries in a road accident while a motor cycle in which he was travelling collided with a car and the Tribunal found him contributory negligent to 20% and awarded a compensation of Rs.37,200/=. It is against that decision, the claimant has come up in appeal.

2. Heard the learned counsel for all sides. The learned counsel for the appellant would contend that the Tribunal did not allow any medical expenses and further that though his salary was accepted as Rs.14,610/= and as he was on leave for 77 days, did not give proper compensation for that period. The learned counsel also contends that the finding of contributory negligence is incorrect. The accident took place in a busy part of the town. When the car which met with the accident was moved forward it was at that time the motor M.A.C.A.No.1484 OF 2009 cycle came and hit on the right bumper of the car. In a place like Kochi city where the traffic is so congested and if a person bestows some degree of care, he could have averted this accident. Similarly when a car is parked and it is being taken then necessarily one has to apply maximum care to see whether any other vehicles are coming from two sides so as to avert the accident. So the major contributory is the car driver and it is on account of the speed of the claimant that he had happened to hit on the side of the car. Therefore I do not find any mistake in apportioning the negligence at 80% on the car driver and 20% on the claimant.

3. So far as the quantum of compensation is concerned, it is seen that the claimant had sustained fracture of the humerus and he was treated as inpatient in a hospital for 3 days, nailing was done and after review of 8 days, his hand was under plaster cast for 42 days and after removal of the plaster cast, bandage was applied for 22 days. The medical certificate also reveals that he was advised to be absent from duty for 77 days. If he continues in service certainly he M.A.C.A.No.1484 OF 2009 could have availed this leave at a later point of time when necessity arises. Therefore, I fix the loss of earnings at Rs.30,000/= and retain all other heads which would come to Rs.59,500/=. When the claimant is entitled for 80%, the compensation amount would come to Rs.47,600/= out of which Rs.37,200/= has been awarded. So the claimant will be entitled to an additional compensation of Rs.10,400/=

4. In the result, the MACA is partly allowed and the claimant is awarded an additional compensation of Rs.10,400/= with 7.5% interest on the said sum from the date of the petition till realisation and the respondent insurance company is directed to deposit the said amount within a period of 60 days from the date of receipt of a copy of this judgment.

Disposed of accordingly M.N. KRISHNAN, JUDGE cl M.A.C.A.No.1484 OF 2009