

CASE NO.:
Appeal (civil) 2151 of 2008

PETITIONER:
Ponnumany alias Krishnan & Anr

RESPONDENT:
V.A. Mohanan & Ors

DATE OF JUDGMENT: 27/03/2008

BENCH:
S.B. SINHA & P.P. NAOLEKAR

JUDGMENT:
J U D G M E N T
NON-REPORTABLE

CIVIL APPEAL NO 2151 OF 2008
[arising out of Special Leave Petition (Civil) No. 5207 of 2006]

P.P. NAOLEKAR, J.

1. Leave granted.

2. The first appellant met with a motor accident and as a result thereof he was paralysed due to head injury. It was found by the Motor Accident Claims Tribunal that he was having 100% disability and that he was an agriculturist having five acres of land. The Tribunal on assessment of the evidence led by the parties fixed a sum of Rs.10,000/- as yearly income from agriculture and taking into consideration the age of the appellant, multiplier of 13 was applied and was awarded an amount of Rs.1,30,000/- towards loss of earning capacity; Rs. 20,000/- towards the pain and suffering suffered by him; Rs. 3,000/- towards the cost of hospitalization; and Rs.50,000/- towards continued loss of amenities, totalling to a compensation of Rs. 2,03,000/-. Aggrieved by the quantum of compensation awarded by the Tribunal, the appellant approached the High Court of Kerala. The High Court partly allowed the appeal and modified the award. The High Court was of the view that the income of the appellant should have been assessed on the basis of notional income of a non-earning person as fixed in the Second Schedule to the Motor Vehicles Act. Considering that the appellant would be entitled to Rs.1,95,000/- as loss in earning capacity, the High Court thus enhanced the amount of compensation under that head by an amount of Rs.65,000/-. The High Court was further of the view that the appellant would require the life-long attention and for that he would be requiring by-standers/nursing expenses and awarded Rs.20,000/- on that account. Considering the long term treatment from 1.7.1996 to 30.7.1996 in hospital and the nature of the injury sustained, the compensation towards medical expenses was enhanced by an additional amount of Rs.10,000/-.

3. Thus, in the appeal the High Court has enhanced the amount of compensation by an amount of Rs.95,000/- with 7% interest per annum from the date of application till the date of deposit. Aggrieved by the said order on account of inadequate compensation under the headings of loss of income, pain and suffering and continuous loss of amenities, the present appeal has been filed.

4. It is contended by the learned counsel for the appellants that the assessment of compensation on the basis of notional income of a non-earning person according to the Second Schedule to the Motor Vehicles Act, 1988, of Rs.15,000/- as notional yearly income of the

accident victim applying the special provisions of Section 163A of the Act was not correct when the evidence has been led to show that the appellant was an agriculturist and holding 5 acres of land.

5. The assessment of damages to compensate the claimants is beset with difficulties because from the nature of the things, it depends on many factors such as the amount that the deceased would have earned during the remainder of his life, the chances that the deceased may not have lived to their life expectancy, the chances that the deceased might get more or less income.

6. In the present case, although the first appellant has placed material before the court to show that he owned the agricultural lands but there is no convincing evidence to prove the income out of that. That apart, since he owned the land it cannot be said that there is a total loss of income due to the injury suffered by the appellant: thus, the calculation of the amount of compensation on the basis of the notional income cannot be faulted with.

7. For the aforesaid reasons, we do not find any good or sufficient reason to interfere with the order passed by the High Court.

8. The appeal is dismissed.