(2022) 01 KL CK 0100

In the High Court Of Kerala

Case No : MACA NO. 2233 Of 2009

Ameer, S/o Ahammedkoya — APPELLANT

Vs

E.Narendran, S/o Arumughan — RESPONDENT

Date of Decision : 17-01-2022

Acts Referred:
Motor Vehicles Act, 1988 — Section 166

Citation : (2022) 01 KL CK 0100

Hon'ble Judges : M.R.Anitha, J

Bench : Single Bench

Advocate : V.S.Chandrasekharan, Lekshmi Swaminathan, K.C.Beena, K.K.Preetha

Final Decision : Partly Allowed

Judgement

M.R.Anitha, J

1. The appellant is the claimant in OP(MV) No.3303/2001 on the file of the Principal Motor Accidents Claims Tribunal, Kozhikode. The claim petition

was filed under Section 166 of the Motor Vehicles Act, 1988, claiming compensation on account of the injuries sustained by the appellant in a motor

accident, which was occurred on 24.4.2001 at about 7.00 p.m., while he was riding a bicycle from Mannur to Vadakkumbadam keeping the proper

side of the road, a scooter bearing Reg.No.KL-10/2456 came rashly and negligently and dashed to the bicycle. Due to the accident, he sustained

injuries and was taken to Medical College Hospital, Kozhikode. The accident occurred due to the rash and negligent driving of rider of the scooter, the

2nd respondent. 1st respondent is the owner of the scooter and the vehicle is insured with the 3rd respondent, the Insurance Company. A total

compensation of Rs.2,00,000/- (Rupees Two Lakhs only) has been claimed.

2. Before the Tribunal, respondents 1 and 2 remained absent and they were set ex-parte. 3rd respondent/insurer filed written statement admitting the

insurance coverage of the Motor Cycle but denied negligence on the part of the 2nd respondent. The compensation claimed under the various heads

are contended to be excessive and exaggerated.

3. There was no oral evidence from either side. Exts.A1 to A4 were marked from the side of the appellant/claimant.

4. After considering the pleadings and materials on record, the Tribunal arrived at a conclusion that the accident occurred due to the rash and

negligent driving of the scooter by the 2nd respondent rider. The Tribunal held that the 3rd respondent insurer to pay the amount. Under various heads,

the Tribunal awarded a total compensation of Rs.7,000/- (Rupees Seven Thousand only) together with interest at the rate of 7.5% per annum, from

the date of petition, i.e., 25.11.2001.

5. Dissatisfied with the quantum of compensation awarded by the Tribunal, the appellant came up before this Court in appeal.

6. Heard the learned counsel for the appellant and also the learned Standing Counsel for the 3rd respondent insurer. So the only point for consideration

is whether the appellant is entitiled for enhancement of the total compensation awarded by the Tribunal. Exhibit A2 is the copy of the wound

certificate. The injuries noted are a linear fracture involving anterior wall of maxillary sinus and haemosinus and incidental periorbital air in the orbit.

The injury was revealed by C.T. scan of the head. Exhibit A4 series are medical bill for Rs.1957/-. He was admitted in the Medical College Hospital

for six days. The petitioner was 14 year old boy.

7. In Raj Kumar v. Ajay Kumar and Another (2011 (1) SCC 343 = 2010 KHC 5021) the Apex Court has laid down general principles relating to

compensation in injury cases. The object of awarding damages to an injured in a motor vehicle accident is to make good the loss suffered as a result

of wrong done as far as money can do so, in a fair, reasonable and equitable manner. A person is not only to be compensated for the physical injury,

but also for the loss which he suffered as a result of such injury.

8. The compensation is awarded under the heads Pecuniary damages (Special Damages) and Non-pecuniary damages (General Damages). In routine

personal injury cases pecuniary damages awarded only under the heads, expenses relating to treatment, hospitalization, medicines, transportation,

nourishing food, and miscellaneous expenditure; Loss of earning during the period of treatment; Damages for pain, suffering and trauma as a

consequence the injuries alone need be awarded. The assessment of pecuniary damages involves the reimbursement of actual expenses met by the

victim to be made available by the injured in evidence. Assessment of non-pecuniary damages involves determination of lump sum amounts with

respect to factors like age, nature of injury, disability suffered if any, and effect of it on future life of the claimant.

9. The Tribunal awarded amount under various heads as follows:

Medical Bills - Â Â Â Â Â Â Â Â Â Â Â Â Rs.1957/-

Incidental Charge -Â Â Â Â Â Â Â Rs.1000/-

Pain & suffering - Â Â Â Â Â Â Â Â Rs.2500/-

Loss of amenity - Â Â Â Â Â Â Â Â Â Rs.1000/-

Transportation -Â Â Â Â Â Â Â Â Â Â Â Â Rs. 500/-

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Â Rs.6957/-

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Rounded as Rs.7000/-

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10. In the present case, admittedly the petitioner has not sustained any disability due to the accident and no disability certificate also has been

produced. But the records produced from the side of the appellant would go to show that he is a 14 year old boy and sustained a linear fracture

involving anterior wall of maxillary sinus and haemosinus and incidental periorbital air in the orbit. He has undergone inpatient treatment at Medical

College Hospital, Kozhikode, for six days. The accident was on 24.4.2001.

He has produced medical bills in total for Rs.1957.

11. The above factors would reveal that the injuries sustained by the appellant is on the maxillary sinus and there is linear fracture involving anterior

wall of maxillary sinus and haemosinus and incidental periorbital air in the orbit.

12. According to the learned counsel for the appellant, he had undergone inpatient treatment at Medical College Hospital, Kozhikode, from 24.04.2001

to 30.04.2001. But no amount is seem to be awarded towards attendant expenses. Copy of the wound certificate is marked as Exhibit A2, it would

shows that the injured was admitted in the hospital, though, the discharge date is not shown. The endorsement in the wound certificate would go to

show that ENT, Dental and Neuro consultation was done. So in view of the nature of injuries sustained by the appellant, the averment in the petition

that he had undergone treatment at Medical College Hospital from 24.04.2001 to 30.04.2001, can be accepted as true. So, under the head of attendant

expenses for seven days @ Rs.200/- per day, the appellant is entitled to get Rs.200x7=Rs.1,400/-.

13. In view of the injuries sustained to the appellant an eight year old boy the amount of Rs.2,500/- awarded by the Tribunal under the head of pain

and suffering is seems to be very low and it can be enhanced to Rs.6,000/-. It is alleged in the petition that due to the accident and the consequent

injuries, he cannot concentrate on his studies and is not able to do any work. Since the injuries sustained to the appellant is on the maxillary sinus and

there is also linear fracture involving anterior wall of maxillary sinus and haemosinus, there would have some discomfort for the injured boy in his

studies. So the amount of Rs.1,000/- awarded under the loss of amenities can be enhanced to Rs.4,000/-. So in total the appellant is entitled for an

enhanced compensation of Rs.1,400+Rs.3,500+Rs.3,000 =Rs.7,900/-.

14. The appellant is entitled for an enhanced compensation of Rs.7,900/- (Rupees Seven Thousand Nine Hundred only).

15. The appeal has been filed with delay of 972 days, while allowing Crl.M.A. No.2600/2009 and condoning the delay,it has been specifically provided

that the appellant will not be entitled for interest for the period of delay.

16. In the result, appeal is allowed in part by enhancing compensation to an amount of Rs.7,900/- which will carry interest @ 7.5% per annum from

the date of petition excluding the period of delay of 972 days in filing the appeal. The 3rd respondent, the Insurance Company, shall satisfy additional

compensation granted in this appeal together with interest within a period of two months from the date of receipt of certified copy of this judgment.

The appellant shall provide the Bank account details (attested copy of relevant page of bank pass book, Bank Account number and IFSC code of the

branch) before the Tribunal with a copy to the learned Standing Counsel for the insurer, within one month from the date of receipt of certified copy of

this judgment.

