

(2012) 07 KL CK 0010
In the High Court Of Kerala
Case No : MACA. No. 1591 of 2006 (A)

Annamma John @ Gracy John

APPELLANT

Vs

C. Gopinathan, Jayarajan and M/s. Oriental Insurance Co. Ltd.

RESPONDENT

Date of Decision : 27-07-2012

Acts Referred:

Citation : (2012) 07 KL CK 0010

Hon'ble Judges : Pius C. Kuriakose, J;A.V. Ramakrishna Pillai, J

Bench : Division Bench

Advocate : K. Sandesh Raja, for the Appellant; A.R. George, for the Respondent

Final Decision : Allowed

Judgement

Ramakrishna Pillai, J.—We suo motu recall our judgment dated 19/07/12. The appellant, a 53 year old house wife while travelling by a Maruti Car on 13/09/98 met with an accident as the car collided with the tanker lorry which was coming from the opposite direction. Against the claim of Rs. 10 lakhs, the learned Tribunal awarded a sum of Rs. 5,03,660/- as compensation together with interest at the rate of 9% per annum attributing negligence against the driver of the tanker lorry. As the third respondent has admitted the policy of the offending vehicle, they were directed to pay the compensation.

2. In this appeal the appellant is challenging the adequacy of the compensation awarded.

3. We have heard the learned counsel for the appellant and the learned counsel for the third respondent Insurance Company. The impugned award was also perused.

4. Medical records reveal that the appellant sustained the following injuries:-

1. Fracture to right humerus.

2. Fracture to maxilla right and left.

3. Fracture to mandible left and right.
4. Head injury with narrowing of cisterns zone.
5. Extra cerebral and subrachnoid spaces indicating cerebral oedema.
6. Bleeding over posterior hemispheric tissues of brain over the tendorium - carebellum and posterior horn left lateral ventricle of brain.
7. Injury to left axillary artery with loss of pulsation.

5. The appellant was subjected to open reduction and internal fixation for the fractures. The head injury was managed conservatively. She was hospitalised for 90 days. On going through the award, we notice that adequate compensation has been awarded by the learned Tribunal towards pain and suffering, loss of amenities in life during the period of treatment and convalescence and towards bystander's expenses.

6. The main grievance voiced against the award is that the appellant was not awarded adequate compensation towards permanent disability as well as towards loss of earnings. According to the appellant, she being a house wife was earning a monthly income of Rs. 3,000/-. But the learned Tribunal fixed the monthly income at Rs. 1,500/-. The accident was in the year 1998. We feel justified in adopting the monthly income of the appellant at Rs. 2,500/- for awarding compensation for loss of earnings as well as for permanent disability. Presumably she might not have been able to do any work at least for a period of twelve months. That means she is entitled to get a sum of Rs. 30,000/- as compensation towards loss of earnings. The amount awarded by the Tribunal under that head is only Rs. 10,000/-, we award to the appellant an additional sum of Rs. 20,000/- on that count.

7. Three disability certificates Exts.A47, A48 and A49 were pressed into service to prove the residual disability of the appellant. As per Ext.A49 she has a neurological deficit of 42%. As per Ext.A47 she has a residual disability of 18% due to the injuries to the face and as per Ext.A48 she has a residual disability of 11% on account of the fracture to humerus. On a consolidation of these certificates, we are of the view that the appellant is having a residual disability of 55%. We also take into account the psychic disturbances the appellant is undergoing as evidenced from Ext.A52. When the disability compensation is re-worked on the basis of the revised monthly income as well as fixing the percentage of disability at 55% the compensation for permanent disability shall stand enhanced to Rs. 1,81,500/-. As the learned Tribunal awarded only a sum of Rs. 83,160/-, the appellant becomes entitled to get an additional sum of Rs. 98,340/- towards compensation for permanent disability.

8. The learned counsel for the appellant would submit that no compensation has been awarded by the learned Tribunal for future treatment. The learned counsel for the third respondent Insurance Company per contra would submit that in the absence of any convincing evidence to show that the appellant had undergone

subsequent treatment, the appellant is not entitled to get any further amount towards compensation for future treatment. We are not inclined to award any additional sum towards future treatment in the absence of any convincing evidence to show that the appellant had undergone subsequent treatment. We notice that no bills pertaining to subsequent treatment were produced by the appellants.

9. Thus in total the appellant becomes entitled to get an additional sum of Rs. 1,18,340/- over and above what has been awarded by the learned Tribunal. This will carry interest at the rate of 7.5% per annum from the date of claim petition till realisation. The appeal is allowed. The impugned award shall stand modified as above.