
(2012) 03 KL CK 0180
In the High Court Of Kerala
Case No : MACA No. 1622 of 2008 (E)

Antu

APPELLANT

Vs

Shiju K.O. and Manager, Oriental Insurance Co. Ltd.,
Chalakkudy

RESPONDENT

Date of Decision : 01-03-2012

Acts Referred:

Citation : (2012) 03 KL CK 0180

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

Bench : Division Bench

Advocate : P.V. Baby, for the Appellant; P.V. Jyothi Prasad for R3, for the Respondent

Final Decision : Allowed

Judgement

Pius C. Kuriakose, J.—A Painter who suffered very serious injuries - very disfigured left leg having a semi bracket shape of petella lost practically, as a result of the compound fracture of the lower end of left femur, compound fracture of the left forearm, compound fracture of left petella and compound fracture of both bones of the left leg complains that the Motor Accidents Claims Tribunal did not award him adequate compensation. His claim was for a total compensation of Rs. 4,96,000/- and under the impugned award the learned Tribunal has awarded Rs. 1,51,300/-.

2. The grounds raised in this appeal are that the learned Tribunal did not adopt the correct monthly income of the appellant for the purpose of determining disability compensation as well as loss of earnings. There are grounds to the effect that towards heads such as pain and sufferings, loss of amenities, bystander's expenses, loss of earnings, the appellant was not awarded adequate compensation.

3. We have heard the submissions of Sri. A.N. Santhosh, the learned counsel for the appellant and the learned Standing Counsel for the Insurance Company. Sri.

Santhosh argued that there is gross inadequacy in the compensation awarded whereas according to the learned Standing Counsel for the Insurance Company, the learned Tribunal has awarded reasonable compensation.

4. We have considered the rival submissions and we have very carefully gone through the award. Having considered the nature of the injuries sustained and the learned Tribunal's finding regarding the condition of the appellant at the time of the enquiry, we feel that the appellant has not been awarded adequate compensation on most of the heads. We are of the view that there is justification for awarding Rs. 5,000/- more towards pain and sufferings and we award that amount to the appellant. Towards loss of amenities also the appellant has not been awarded adequate compensation. We award to the appellant Rs. 10,000/- more towards that head. The Tribunal took the notional income of the appellant, a Painter to be Rs. 2,000/- only. According to us, Rs. 3,000/- should have been taken to be the income and loss of earnings was allowed to the appellant only for six months. According to us, having regard to the nature of the injuries sustained the appellant should have been awarded loss of earnings for a minimum period of 12 months. This means that the appellant will be entitled for an additional compensation of Rs. 24,000/- towards loss of earnings and we award the said amount to the appellant. There is inadequacy in the compensation awarded towards bystander's expenses and we award to the appellant Rs. 800/- more towards that head. As we have enhanced the monthly income the disability compensation will naturally stand enhanced by Rs. 33,600/- which we award to the appellant.

5. One of the serious arguments addressed before us by Sri. Santhosh, the learned counsel for the appellant was that the learned Tribunal did not adopt the correct percentage of disability as reported by the Doctors. Though the learned counsel was very persuasive, we are of the view that the percentage of 17.5% adopted by the learned Tribunal is the correct percentage. However, taking into account the fact that the appellant continues to be almost completely disabled even now, we are sure that the appellant will require future treatments. Towards future treatments we award to the appellant Rs. 25,000/- more. Thus in all we award to the appellant a sum of Rs. 1,05,600/- over and above what is awarded by the Tribunal. This amount except the sum of Rs. 25,000/- which we award towards future treatment will carry interest at the rates awarded by the Tribunal in its award.

6. The appeal is allowed to the above extent. No costs.