

(2014) 06 KL CK 0132
In the High Court Of Kerala
Case No : M.A.C.A. No. 1680 of 2013 (C)

Anuraj

APPELLANT

Vs

Suresh Kumar

RESPONDENT

Date of Decision : 02-06-2014

Acts Referred:

Citation : (2014) 06 KL CK 0132

Hon'ble Judges : Babu Mathew P. Joseph, J

Bench : Single Bench

Advocate : C. Rajendran, Advocate for the Appellant; S.K. Ajay Kumar and Sri. M.A. George, Advocate for the Respondent

Final Decision : Partly Allowed

Judgement

Babu Mathew P. Joseph, J.—The appellant sustained injuries in a motor accident that occurred on 16-08-2002 involving a car driven by the third respondent, owned by the first respondent and insured with the second respondent. He has filed an application before the Motor Accidents Claims Tribunal, Kollam, claiming compensation on account of the injuries sustained in the accident. The learned Tribunal, after considering the matter, found that the accident had occurred due to the negligence of the third respondent and awarded a total compensation of 24,500/- (24,200/- rounded off to 24,500/-) as follows:-

Bystander"s expenses - 1,200/-

Transport to hospital - 1,000/-

Extra nourishment - 1,000/-

Pain and suffering - 15,000/-

Medical expenses - 6,000/-

Dissatisfied with the quantum of compensation awarded by the Tribunal, the appellant has preferred this appeal claiming enhanced compensation.

2. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the second respondent Insurance Company. No representation for the respondents 1 and 3 despite serving notice on them.

3. Learned counsel for the appellant submits that the appellant has sustained fracture of his left tibia and some minor injuries. He has undergone long period of in-patient as well as out-patient treatments. But, the amounts awarded by the Tribunal under various heads are very low. The Tribunal has not even awarded any amount under the head of loss of amenities. Therefore, he prays for enhancing the amount of compensation.

4. Learned counsel for the second respondent, on the contrary, submits that the Tribunal has awarded sufficient compensation under all the heads. The appellant has not produced any disability certificate in order to claim compensation under the head of loss of amenities. The claim of the appellant for enhanced compensation is made without the support of any evidence. Therefore, he prays for dismissing this appeal.

5. The appellant was taken to Upasana Hospital, Kollam, after the accident. He had tenderness with swelling on both the legs. Fracture of left tibia was confirmed in x-ray. He has undergone in-patient treatment from 16-08-2002 to 28-08-2002. He has not produced any disability certificate.

6. The amounts awarded by the Tribunal under various heads do not call for any interference. Since the appellant has sustained fracture of tibia, it is quite natural that he would have suffered loss of amenities for a few months. But, under that head, no amount has been awarded by the Tribunal. Therefore, 5,000/- is awarded under the head of loss of amenities. The appellant is not entitled to any more amount as compensation. Thus, the appellant is entitled to 5,000/- over and above the amount already awarded by the Tribunal. The said amount of 5,000/- shall carry interest at the rate of 9% per annum from the date of filing of the petition till realisation except for the period from 29-12-2009 to 08-02-2013 as done by the Tribunal. The second respondent Insurance Company shall deposit the amount within two months from today.

7. Learned counsel for the second respondent submits that the third respondent was not holding a driving licence for driving the car at the time of accident. It was so found by the learned Tribunal. Therefore, a direction was issued to pay the amount awarded to the claimant by the second respondent and permitted them to recover the same from the first respondent. Therefore, he prays for permitting the second respondent to recover the enhanced amount of compensation allowed in this appeal from the first respondent.

8. The Tribunal has not entered a finding that the absence of driving licence had contributed to the cause of the accident. Moreover, the second respondent has not even made an attempt to prove that the absence of driving licence, in fact, contributed to the cause of the accident. Therefore, in the light of the ruling of the Honourable Supreme Court in National Insurance Co. Ltd. Vs. Swaran Singh

and Others, , the second respondent is liable to indemnify the first respondent under the Insurance Policy. They are liable to pay the enhanced compensation to the appellant and they are not entitled to recover the same from the first respondent. Hence, the prayer for recovering the amount made by the learned counsel for the Insurance Company is rejected.

This appeal is allowed in part as above.