(2024) 11 KL CK 0021

In the High Court Of Kerala

Case No : M.A.C.A. No. 2014 Of 2011

Anzar APPELLANT

Vs

President, Swantham Charitable Society RESPONDENT

Date of Decision : 08-11-2024

Acts Referred:

Motor Vehicles Act, 1988 — Section 147

Citation : (2024) 11 KL CK 0021

Hon'ble Judges : Johnson John, J

Bench : Single Bench

Advocate : Pratheesh.P, Mathews Jacob, P.Jacob Mathew

Final Decision : Allowed

Judgement

Johnson John, J.

1. The appellant was the petitioner in O.P (MV) No. 612 of 2008 on the file of the Motor Accident Claims Tribunal, Kollam.

2. According to the appellant, he was travelling in an ambulance with registration No. KL-2/Z 3250 and when the ambulance reached at Ichoda in Andhra Pradesh at about 10 a.m., on 18.04.2007, it caused to hit on an autorickshaw due to the rash and negligent driving of the second respondent, who was the driver of the ambulance. At the time of the accident, the appellant was returning to Kerala after accompanying a dead body from Kerala to Hyderabad. The 1st respondent is the owner of the vehicle and 3rd respondent is the insurer. In the accident, the petitioner sustained serious injuries, including fracture. The 1st and 2nd respondents were set ex parte.

3. The 3rd respondent insurance company contended that the petitioner was a gratuitous passenger not covered by the policy.

4. At the time of trial, Exhibits A1 to A11 were marked from the side of the appellant and no evidence adduced from the side of the 3rd respondent

insurance company.

5. After trial and hearing both sides, the Tribunal found that the accident occurred because of the negligence on the part of the 2nd respondent and awarded a total compensation of Rs.64,000/- as against respondents 1 and 2. The Tribunal found that the appellant was a gratuitous passenger in the ambulance and therefore, exonerated the insurance company from liability.

6. The appellant is challenging the finding of the Tribunal exonerating the insurance company and also seeking enhancement of compensation.

7. Heard Sri. Pratheesh P., the learned counsel appearing for the appellant and Sri. P. Jacob Mathew, the learned Senior Counsel appearing for the 3rd respondent.

8. The learned counsel for the appellant pointed out that another passenger in the same ambulance who sustained injuries challenged the finding of the Tribunal exonerating the insurance company from liability and a Division Bench of this Court, as per judgment dated 16.03.2017 in M.A.C.A Nos. 844 of 2012 and 73 of 2015, set aside the finding of the Tribunal in this regard following the principles laid down by the Honourable Supreme Court in National Insurance Co. Ltd. v. Anjana Shyam [(2007) 7 SCC 445] and Shareena v. Anugraha Hospitals Pvt. Ltd. [2017 (1) KLT 478] and held that the insurance company cannot be exonerated and the liability has to be shouldered by the Insurance Company, treating the passenger in the ambulance as a 'third party' coming within the provisions of Section 147 of the Motor Vehicles Act.

9. The learned counsel for the 3rd respondent insurance company also conceded that the position is covered by the decision of the Division Bench in the connected case arising out of the same incident. In the above circumstances, I find that the finding of the Tribunal exonerating the insurance company from liability is liable to be set aside.

10. The learned counsel for the appellant pointed out that the Tribunal fixed only Rs.2000/- as notional income and that the principles laid down by the Honourable Supreme Court in the decisions in Ramachandrappa v. Royal Sundaram Alliance Insurance Co. Ltd. [(2011) 13 SCC 236] and Syed Sadiq and Others v. Divisional Manager, United India Insurance Company [(2014) 2 SCC 735 = 2014 KHC 4027], shows that even in the absence of any evidence, the monthly income of an ordinary worker has to be fixed as Rs.4500/- in respect of the accident occurred in the year 2004 and for the subsequent years, the monthly income could be reckoned by adding Rs.500/- each per year.

11. The accident in this case occurred in 2007. Therefore, the monthly income of the appellant in the year 2007 can be fixed as Rs.6000/- by adopting the principles laid down by the Honourable Supreme Court in the above decisions.

12. The Tribunal granted compensation for loss of earnings for a period of 3 months. Since the monthly income has been enhanced to 6000/-, the appellant

would get additional compensation for loss of earnings. Accordingly, a further sum of Rs.12,000/- is awarded towards loss of earnings.

13. The next head which requires consideration is pain and sufferings and the amount awarded by the Tribunal is Rs. 15,000/-. It is in evidence that the petitioner was in hospital from 18.04.2007 and that he availed treatment upto 22.09.2007. It is in evidence that the petitioner suffered a fracture of the femur and therefore, considering the prolonged treatment and nature of the injuries, I am of the view that the appellant is entitled for enhanced compensation under the head 'pain and sufferings’. Therefore, considering the facts and circumstances, an additional compensation of Rs.10,000/- is granted to the appellant under this head.

14. The Tribunal has not awarded any amount towards extra nourishment and damage to clothing. Considering the facts and circumstances and nature of injuries sustained by the appellant, I am of the view that Rs.2,000/- can be allowed towards extra nourishment and Rs.500/- towards damage to clothing.

15. Accordingly the appellant is entitled to the enhanced compensation as given below:

Particulars

Compensation awarded by the Tribunal (Rs.)

Additional amount granted by this Court (Rs.)

Loss of earnings

6,000/-

12,000

Pain and sufferings

15,000/-

10,000/-

Extra nourishment

Nil

2,000/-

Damage to clothing

Nil

500/-

Total enhanced compensation

24,500/-

16. Thus, a total amount of Rs.24,500/- (Rupees Twenty Four Thousand and Five Hundred Only) is awarded as enhanced compensation. The said amount shall carry interest @ 7.5% per annum from the date of the application till realization. The findings in the impunged award exonerating the third respondent insurance company from liability is set aside. The appellant would also be entitled to proportionate costs in the case. The claimants shall furnish the details of the bank account to the insurance company for transfer of the amount. The third respondent insurance company is permitted to recover the amount from the first respondent, owner of the vehicle, after satisfying the liability towards the claimant.

The appeal is allowed as above.