(2010) 01 KL CK 0067

In the High Court Of Kerala

Case No : M.A.C.A. No. 26 of 2006 (A)

Ayyappadas APPELLANT

Vs

Sajeev, Sukumari Sukumaran and The Divisional Manager RESPONDENT

Date of Decision : 22-01-2010

Acts Referred:

Citation : (2010) 01 KL CK 0067

Hon'ble Judges : R. Basant, J;M.C. Hari Rani, J

Bench : Division Bench

Advocate : J. Harikumar, for the Appellant; George Cherian (Thiruvalla), for the Respondent

Final Decision : Allowed

Judgement

R. Basant, J.—The injured/claimant is the appellant. He suffered injuries in a motor accident which took place on 22-8-1999. He was employed as a Superintendent of Central Excise. He suffered compound fracture of the neck and shaft of the right femur in addition to other injuries. The injury to spleen was suffered and splenectomy had to be done. He was an inpatient for a period of 49 days. He allegedly suffered permanent disability. Two Doctors of different specialities assessed the permanent disability suffered by him at 13% (Ext.A10) and 8% (Ext.A14). The Tribunal on a consideration of all the relevant inputs awarded a total amount of Rs. 1,67,000/- as compensation as per the details shown below.

1) pain and suffering : Rs. 15,000/-

2)Transportation charges : Rs. 2,000/-

3)Damage to clothing : Rs. 250/-

4)Extra nourishment : Rs. 2,000/-

5)Bystanders expenses : Rs. 3,000/-

6) Medical and miscellaneous expenses : Rs. 21,300/-

7)Loss of earning (cash equivalent to leave loss) : Rs. 91,542/-

8) Loss of amenities : Rs. 10,000/-

9) Reduction in earning capacity: (2000 x 12 x 5 x 18/100) : Rs. 21,600/- -------------------- Total : Rs. 1,66,692/- Rounded to : Rs. 1,67,000/-

2. The appellant/claimant claims to be aggrieved by the impugned award. Called upon to explain the nature of the challenge which the appellant wants to mount against the impugned award, the learned Counsel for the appellant assails the impugned award on various grounds.

3. First of all it is contended that the Tribunal erred grossly in reckoning the probable income after his retirement from service at the age of 60 years to be 2000/- per mensem. This was too unrealistic, argues the counsel. According to the learned Counsel, considering the qualifications and the position held by the appellant now, his post retiral employment prospects were very much higher and the Tribunal erred grossly in reckoning 2000 as the multiplicand. The counsel further contends that going by the multiplier adopted by the Supreme Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , a person who is aged 60 years old, is entitled to insist that 7 must be reckoned as the multiplier.

4. We find merit in the contention of the learned Counsel for the appellant. The Tribunal rightly came to the conclusion that at present there is no loss of earnings and the loss of earnings, if any, would arise only after the appellant/ claimant attains the age of superannuation and retirement from service. The Tribunal had to estimate the probable income which the appellant is likely to get after he retires on superannuation from his present employment. He is to retire at the age of 60 years and he is aged 50 years. The learned Counsel for the Insurance Company is eminently justified in contending that while adopting the multiplier realistically it must be taken note that the amounts which are likely to be earned after 10 years are being given to the claimant now. In this view of the matter the learned Counsel argues that an appropriate multiplicand has to be chosen taking into account all the realities involved.

5. We take note of all the rival contentions. We are satisfied that the multiplicand has to be chosen taking into account all the realities. But even then, we are not satisfied that the amount of Rs. 2,000/- taken into reckoning by the Tribunal is fair or reasonable. We are satisfied that an amount of Rs. 3,000/- can be reckoned as the multiplicand after taking into account all the relevant circumstances.

6. We are of the opinion that the adoption of 18% as the percentage of reduction in earning capacity is absolutely reasonable even in the wake of Exts.A10 and A14. The disabilities mentioned in Exts.A10 and A14, even if accepted in toto, it is accepted without demur that what the Tribunal has to ascertain is not the

physical disability; but the reduction in earning capacity. So reckoned, 18% adopted by the Tribunal as the percentage of reduction in earning capacity does appear to us to be absolutely reasonable. We agree with the learned Counsel for the appellant that `7'' and not `5'' can be reckoned as the multiplier drawing inspiration from the dictum in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, .

7. The learned Counsel for the appellant then contends that the amounts awarded under the heads of extra-nourishment and bystander''s expenses are too inadequate. The appellant was in the hospital as an inpatient for 49 days. The appellant could not have survived without a bystander during that period. Bystander''s expenses have not been awarded even at the meagre rate of Rs. 100/- per day. We are satisfied that under the composite head of bystander''s expenses and extra-nourishment, an amount of Rs. 150/- per day can safely be awarded during the period of hospitalisation.

8. The learned Counsel for the appellant then contends that the compensation for pain and suffering has not been reasonably awarded. Fracture of the shaft and neck of the right femur was suffered. Splenectomy had to be conducted. The appellant was an inpatient for a period of 49 days. Permanent disability was suffered. We note that only an amount of Rs. 15,000/- has been awarded under the head of pain and suffering. We find that reasonably the same can be enhanced to Rs. 20,000/-.

9. Finally, the learned Counsel for the appellant contends that under the head of loss of amenities, only an amount of Rs. 10,000/- has been awarded. 13% disability under Ext.A10 and 8% disability under Ext.A14 is certified. The court below, however, accepted reduction in earning capacity only at the rate of 18%. Even assuming that the disability to be reckoned as only 18%, it must have been noted that this reduction in physical capacity is likely to impair the quality of life of the appellant considerably. He was only 50 years of age. He will have to endure such disability for a long period of time. In his day-to- day life this is likely to cause difficulties and trauma to him. The learned Counsel contends that the Tribunal only held that there is no actual reduction in earnings considering the nature of employment of the appellant. The Tribunal did not take note of the fact that to produce the same out put of work with only 82% of ability as found by the Tribunal, the appellant will have to strain harder to put in the same amount of work to earn the same amount of remuneration. While ascertaining the quantum of loss under the head of loss of amenities, the Tribunal should have taken note of the additional efforts that the appellant will have to put in with the impaired faculties in every walk of life including his employment. We find force in the contention. We are of the opinion that the amount awarded under the head of loss of amenities is too low. We are satisfied that an amount of Rs. 25,000/- can be granted as compensation for loss of amenities.

10. The above discussions lead us to the conclusion that the appellant is entitled for the following further amounts in addition to the amounts awarded by the

Tribunal:

1. Extra-nourishment and bystander''s expenses (49 x 150 i.e., 7350 minus 5000 (2000 + 3000) - Rs. 2,350.00

2. Pain and suffering (20000 minus 15000) - Rs. 5,000.00

3. Reduction in earning capacity (3000 x 12 x 7 x 18/100) i.e., Rs. 45,360/- minus (Rs. 21,600/-) - Rs. 23,760.00

4. Loss of amenities (25000 minus 10000) - Rs. 15,000.00 --------------- Total - Rs. 46,110.00 =================

11. In the result:

(a) This appeal is allowed in part.

(b) The appellant is found entitled to a further amount of Rs. 46,110/- (Rupees forty six thousand one hundred and ten only) in addition to the amounts already awarded by the Tribunal.

(c) We direct that interest shall be payable on the entire amount of compensation from the date of the petition to the date of award at the rate awarded by the Tribunal.

(d) All other directions of the Tribunal are upheld. The Tribunal shall issue fresh directions regarding release/deposit of the compensation amount.

