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(2012) 03 KL CK 0219

In the High Court Of Kerala

Case No : M. A. C. A No. 1450 of 2008

Baiju — APPELLANT

Vs

A.D. Jose and The Managing Director, K.S.R.T.C., Transport Bhavan, Thiruvananthapuram — RESPONDENT

Date of Decision : 26-03-2012

Acts Referred:

Citation : (2012) 03 KL CK 0219

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

Bench : Division Bench

Advocate : Wilson Urmese, for the Appellant; K. Prabhakaran, SC, K.S.R.T.C., for the Respondent

Final Decision : Allowed

Judgement

Pius C. Kuriakose, J.—A driver who suffered very serious injuries viz. 1) united fracture right leg with shortening of 5.5 cm. 2) partial ankylosis of right ankle with movement 90 degree to 105 degree 3) complete ankylosis of right joint 4) equines deformity to right ankle 5) gross disfiguration of right leg, in a road traffic accident which occurred due to the negligence of the driver of a KSRTC bus which was involved in the accident complains that the Motor Accidents Claims Tribunal did not award him adequate compensation. In the memorandum of appeal, grounds are raised challenging the inadequacy of compensation awarded by the Tribunal on various heads, particularly the head of disability. The appellant''s claim for compensation under various heads was limited to Rs. 6 lakhs and under the impugned award the learned Tribunal awarded a total amount of Rs. 2,18,780/- as compensation under various heads.

2. We have heard the submissions of Sri. Wilson Urmese, the Learned Counsel for the appellant who made extensive submissions before us based on grounds in the memorandum of appeal. According to Sri.Wilson the monthly income of Rs. 2,000/- adopted by the Tribunal for awarding disability compensation and also for awarding loss of earnings is grossly inadequate. Sri.Wilson further submitted that

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the Tribunal seriously erred in not accepting the percentage of 25% certified by the Doctor who was examined before the Tribunal. He submitted that the compensation awarded under various heads is quite inadequate.

3. The submissions of Sri.Wilson Urumese are not resisted by anybody.

4. Having given our anxious consideration to the submissions of Sri. Wilson Urumese and having carefully gone through the impugned award, we are of the view that there is genuineness in the grievance of the appellant that he was not awarded adequate compensation. The appellant was admittedly a lorry driver and the accident occurred in 2003, his monthly income could have been easily taken by the learned Tribunal at Rs. 3,500/- .

5. Having regard to the gravity of the injuries sustained by the appellant, we are of the view that the compensation of Rs. 20,000/- awarded by the Tribunal towards pain and sufferings is inadequate. We award to the appellant Rs. 10,000/- more on that head.

6. We find inadequacy in the compensation awarded towards loss of amenities also. We award to the appellant Rs. 5,000/- more towards that head.

7. The appellant was in the hospital as an inpatient for 43 days. The Tribunal has awarded only Rs. 2,000/- as bystander''s expenses. According to us, bystander''s expenses should have been allowed at the rate of Rs. 200/- per day. This means that we have to award Rs. 6,600/- more towards bystander''s expenses and we award the same to the appellant.

8. As the monthly income has been increased by us to Rs. 3,500/- , the compensation to be awarded towards loss of earnings will consequently increase. We award to the appellant Rs. 9,000/- more towards loss of earnings.

9. We find some force in the submission of Sri. Wilson that the percentage of 12 adopted by the learned Tribunal as the disability suffered by the appellant is inadequate. We adopt 20 as the percentage of disability suffered by the appellant. When percentage of disability is increased as well as the multiplicand is also increased and re-calculation is made it will be seen that the appellant is entitled for a further amount of Rs. 93,840/- towards disability compensation. We award to the appellant the above amount towards disability compensation. Thus in all we award to the appellant Rs. 1,24,440/- over and above what has been awarded by the Tribunal. We award to the appellant interest on the compensation awarded by the Tribunal and the additional compensation presently awarded at the rate of 7.5% per annum from the date of the accident till realisation. The appeal is allowed to the above extent. No costs.

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