
(2010) 06 KL CK 0057
In the High Court Of Kerala
Case No : M.F.A. No. 493 of 2003 (F)

Baiju Thomas alias Biju

APPELLANT

Vs

The Manager and Others

RESPONDENT

Date of Decision : 09-06-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2010) 06 KL CK 0057

Hon'ble Judges : P.Q. Barkath Ali, J;A.K. Basheer, J

Bench : Division Bench

Advocate : Anchal C. Vijayan, for the Appellant; K.G. Radhakrishnan, for the Respondent

Judgement

P.Q. Barkath Ali, J.—In this appeal u/s 173 of the Motor Vehicles Act the claimant in OP(MV) 270/1997 on the file of the Motor Accidents Claims Tribunal, Punalur, challenges the judgment and award of the Tribunal, dated, August 7, 2002 awarding a compensation of Rs. 1,52,679/- for the loss caused to the claimant on account of the injuries sustained by him in a motor accident.

2. The facts leading to this appeal in brief are these: On January 18, 1997 at about 1.30 p.m. the claimant was riding his motorcycle bearing registration No. KL/03A 4592 along the Kayamkulam - Punalur public road and when he reached near Ezhamkulam junction, a jeep bearing registration No. KL 02/D 9332 driven by the 2nd respondent came from the opposite side in a high speed and dashed against the motorcycle of the claimant. The claimant sustained very serious injuries. According to the claimant the accident occurred due to the negligence on the part of the 2nd respondent. The 1st respondent as the owner, the 2nd respondent as the driver and the 3rd respondent as the insurer of the offending jeep are jointly and severally liable to pay compensation to the claimant. He claimed a compensation of Rs. 5 lakhs. Respondents 4 and 5 are the owner and the insurer of the motorcycle of the claimant.

3. Respondents 1 and 2, the owner and the driver of the offending jeep did not

file any written statement. The 3rd respondent, insurer of the offending jeep, filed a written statement admitting the policy and further contended that there was negligence on the part of the claimant. Respondent No. 4, owner of the motorcycle, remained absent and was set ex parte by the Tribunal. Respondent No. 5, insurer of the motorcycle, filed a written statement admitting the policy and further contended that the accident occurred due to negligence on the part of the 2nd respondent.

4. The claimant was examined as PW.1 and the doctor who treated him was examined as PW.2. Exts.A1 to A23 and Ext.X1 were marked on the side of the claimant before the Tribunal. Ext.B1, copy of the policy, was marked on the side of the contesting respondent. On an appreciation of evidence the Tribunal found that the accident occurred due to the negligence on the part of the 2nd respondent and awarded a compensation of Rs. 1,52,679/- with interest at 9% per annum from the date of petition till realisation and Rs. 1,000/- as costs. The claimant has now come up in appeal challenging the quantum of compensation awarded by the Tribunal.

5. Heard the Counsel for the appellant/claimant and the Counsel for the Insurance Company.

6. The accident is not disputed. The finding of the Tribunal that the accident occurred due to the negligence on the part of the 1st respondent is not challenged in this appeal. Therefore, the only question which arises for consideration is whether the claimant is entitled to any enhanced compensation.

7. The claimant sustained the following injuries as revealed from Ext.A7, copy of the wound certificate, issued from the hospital:

1. Compound fracture dislocation and complete dislocation of talus of right ankle.
2. compound fracture both bones of right leg.
3. fracture shaft of right humerus.
4. fracture nasal bone, and
5. multiple soft tissue injuries over right leg, right knee and right shoulder.

Ext.A8 is the referral OP card issued from the hospital. Exts.A9 to A14 are the treatment certificates issued from the Ernakulam Medical Centre Hospital. PW.2, the doctor, has certified in Ext.A15 that the claimant has suffered a disability of 18%.

8. The Tribunal awarded a total compensation of Rs. 1,52,679/-. The break up of the compensation awarded is as under:

transport to hospital - Rs. 5,000/- extra nourishment - 3,000/- bystander's expenses - 5,000/- medical expenses - 76,079/- pain and suffering - 15,000/- disability - 48,600/-

9. The Counsel for the appellant/claimant sought enhancement of the compensation for the disability caused, loss of amenities and enjoyment of life, pain and suffering endured and transportation expenses. The Tribunal took the monthly income of the claimant as Rs. 1250/-, adopted a multiplier of 18 and accepted 18% permanent disability assessed by P.W.2 and awarded Rs. 1,52,679/- for the disability caused. The claimant was employed in Air Force and was aged 25 at the time of the accident. Ext.A17 salary certificate shows that he was drawing a salary of Rs. 8840/- per month. Therefore we feel that his monthly income can be reasonably fixed at Rs. 5000/-. The percentage of disability accepted by the Tribunal and the multiplier adopted as 18 are not seriously challenged. Thus calculated, for the disability caused the claimant is entitled to a compensation of Rs. 1,94,400/-. Thus on this count the claimant is entitled to an additional compensation of Rs. 1,45,800/-.

10. For the pain and suffering endured, the Tribunal awarded a compensation of Rs. 15000/- which appears to be very low. Having regard to the nature of the injuries sustained, we feel that a compensation of Rs. 30,000/- would be reasonable on this count. Thus on this count the claimant is entitled to an additional compensation of Rs. 15000/-.

11. There is another aspect in this case. No compensation was awarded for loss of earnings. After the accident the claimant joined duty only after one year. Therefore towards loss of earnings, he is entitled to a compensation of Rs. 60,000/- i.e. for 12 months at the rate of Rs. 5000/- per month.

12. No compensation was awarded for the loss of amenities and enjoyment of life. Taking into consideration the injuries sustained, we feel that a compensation of Rs. 30,000/- would be adequate on this count. As regards the compensation awarded under other heads, we find the same to be reasonable and therefore we are not disturbing the same.

13. Thus the claimant is entitled to an additional compensation of Rs. 2,50,800/-. He is entitled to interest @ 9% per annum from the date of petition till realisation and proportionate cost. The 3rd respondent being the insurer of the offending vehicle shall deposit the amount before the Tribunal within two months from the date of receipt of a copy of this judgment. The award of the Tribunal is modified to the above extent.

The appeal is disposed of as found above.