

(2012) 03 KL CK 0170
In the High Court Of Kerala
Case No : MACA. No. 1122 of 2007 (B)

Beeran

APPELLANT

Vs

N.R. Prabhakaran and Oriental Insurance Company Ltd.

RESPONDENT

Date of Decision : 13-03-2012

Acts Referred:

Citation : (2012) 03 KL CK 0170

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

Bench : Division Bench

Advocate : ESM. Kabeer, for the Appellant; V.E. Abdul Gafoor, Sri. A. Mohammed Savad, Sri. Mathews Jacob and Sri. P. Jacob Mathew for R2, for the Respondent

Final Decision : Allowed

Judgement

Ramakrishna Pillai, J.—The claimant is in appeal. The appellant approached the Tribunal claiming a compensation of Rs. 3 lakhs on account of the injuries sustained by him in a road traffic accident occurred on 25/07/04. Allegedly while he was walking along the road he was hit down by a motorcyclist. The learned Tribunal fixed primary liability on the 1st respondent who was the motorcyclist and the 2nd respondent Insurance Company who had issued a valid policy was directed to pay the compensation. Against the claim of Rs. 3 lakhs a sum of Rs. 1,25,000/- was awarded as compensation. The adequacy of the compensation is under challenge in this appeal.

2. We have heard the learned counsel for the appellant and the learned counsel for the 2nd respondent Insurance Company. We have also perused the impugned award. The medical records reveal that the appellant sustained the following injuries:-

- 1) Periorbital oedema on the left side.
- 2) Contusion on the left side of the frontal region.
- 3) Fracture to frontal bone.

4) Fracture to mandible.

3. Ext.A4 Discharge Summary and Ext.A8 Scan Report shows that there was contusion on the left frontal lobe of brain. There was CSF leakage also. Admittedly the appellant was hospitalised for about 14 days. The learned Tribunal has awarded a sum of Rs. 20,000/- as compensation for pain and sufferings. The appellant was 57 years old at the time of the accident. Considering the nature of the injuries sustained by the appellant we award to the appellant an additional sum of Rs. 5,000/- as compensation for pain and suffering.

4. Towards loss of amenities for the period during which the appellant underwent treatment, a sum of Rs. 5,000/- was awarded by the learned Tribunal. Presumably the appellant might not have been able to move out at least for a few months. Hence, we are of the view that some more amount could have been awarded by the Tribunal as compensation for loss of amenities. Thus, we award to the appellant an additional sum of Rs. 5,000/- on that count.

5. We do notice that the accident was of the year, 2004 and the learned Tribunal has awarded bystander's expenses at the rate of Rs. 100/- per day for 14 days. As the accident was of the year 2004 we are of the view that the appellant is eligible for bystander's expenses at the rate of Rs. 200/- per day for a period of 14 days. Thus the appellant becomes entitled to an additional sum of Rs. 1400/- as bystander's expenses.

6. The learned counsel for the appellant would argue that the appellant was a headload worker earning daily wages between Rs. 200-250. The learned Tribunal fixed the monthly income of the appellant at Rs. 3,000/- which according to the learned counsel for the appellant is too low. The learned counsel for the Insurance Company per contra would submit that as the appellant was 57 years old at the time of the accident the monthly income fixed by the Tribunal is quite reasonable. We see force in the argument advanced by the learned counsel for the 2nd respondent Insurance Company. So we are not disturbing the finding of the learned Tribunal regarding the compensation for loss of earnings.

7. The learned Tribunal has not awarded any compensation for permanent disability or for continuing discomfort. But we notice that on account of the head injury the appellant suffered CSF leakage which may cause problems like loss of sensation of smell, continuing headache etc. We are of the view that the appellant being a headload worker, the aforesaid discomforts may affect his job. So we are of the view that the appellant has to be compensated for the same. Thus we award to the appellant a sum of Rs. 15,000/- as compensation for the continuing discomfort which would affect the quality of life of the appellant. Thus in total the appellant becomes entitled to Rs. 26,400/- over and above what has been awarded by the learned Tribunal. The amount additionally awarded shall carry interest at the rate of 7.5% per annum from the date of the claim petition till realisation. The appeal is allowed. The impugned award shall stand modified as above.