

(1993) 11 KL CK 0004
In the High Court Of Kerala
Case No : M.F.A. No. 887 of 1991-D

Beeravu

APPELLANT

Vs

K.K. Damodaran and Others

RESPONDENT

Date of Decision : 05-11-1993

Acts Referred:

Motor Vehicles Act, 1988 — Section 96

Citation : (1994) 2 ACC 417 : (1994) ACJ 1297

Hon'ble Judges : K. Narayana Kurup, J; K. John Mathew, J

Bench : Division Bench

Advocate : C. Chandraseekharan, for the Appellant; S. Parameswaran, for the Respondent

Final Decision : Allowed

Judgement

K. John Mathew J.

1. The claimant is the appellant. On 18.4.1986 while he was travelling in a bus belonging to the 1st respondent and driven by the 2nd respondent, the bus hit against an electric post which resulted in seven injuries to the petitioner. According to the claimant, the accident happened due to the rash and negligent driving of the 2nd respondent, viz., the driver. He claimed a compensation of Rs. 2,50,000/- and limited to Rs. 1,00,000/-. The 3rd respondent is the insurer of the vehicle.

2. The Tribunal after considering the evidence fixed the total compensation of Rs. 67,980/-. However, holding that the claimant was also negligent, his negligence was estimated at 50 per cent and awarded only one-half of the amount, namely, Rs. 33,990/-. This appeal is filed by the claimant.

3. On going through the evidence we are of the view that the compensation amount fixed by the Tribunal is quite fair and reasonable. The claimant had a fracture on the lower left hand and crush injury on the left hand. Exh. X-3, case-sheet of Medical College Hospital, Trichur, shows that he was admitted in the

hospital on 18.4.1986 at 8.20 p.m. and discharged on 8.5.1986. As per the case-sheet he had fracture shaft of left humerus and Monteggia's fracture dislocation left forearm. After discharge he was again admitted on 16.6.1986 and discharged on 4.7.1986. Subsequently, he was again admitted on 4.8.1986 in the District Cooperative Hospital, Trichur. On examination the doctor found that there was non-union of left humerus, extension Monteggia's fracture of left forearm with mal-union and there was wrist dropping. On 26.8.1986 the stitches were removed and he was discharged on 27.8.1986. On 26.9.1986, he was again admitted in the Trichur Co-operative Hospital for I.M. nailing on humerus and ulna and excision head of radius which was done on 13.8.1986. On 26.9.1986 he was admitted for removal of nail from ulna. As per Exh. A-6, disability certificate, the petitioner has mal-united fracture humerus left internally fixed with mal-united Monteggia's fracture dislocation left femur and elbow with partial ankylosis on the left shoulder, elbow and finger joints. His permanent partial disablement was assessed at 25 per cent.

4. On the basis of the evidence the Tribunal fixed the monthly income of the petitioner as Rs. 1,500/- and an amount of Rs. 3,000/- being the loss of earning for two months was awarded. For transportation charges an amount of Rs. 1,200/- was awarded. Towards treatment charges an amount of Rs. 6,500/- was awarded. Towards compensation for the expenses of the persons who were attending on him, an amount of Rs. 1,200/- was awarded. For the pain and suffering the petitioner was awarded Rs. 15,000/-. Towards compensation for loss of earning capacity an amount of Rs. 25,000 was awarded. Thus altogether the compensation was fixed at Rs. 67,980/-. In the nature of injuries suffered by the claimant and the evidence adduced we are of the view that the amount fixed is quite fair and reasonable.

5. The 1st respondent in his written statement did not raise any plea of contributory negligence. However, while PW 1 was being cross-examined he was asked by learned counsel for the 1st respondent whether it was not correct to say that the accident happened since the petitioner placed his hand outside the bus. The petitioner denied that suggestion. Thus there was no contention or evidence on the side of the 1st respondent regarding the question of contributory negligence. The insurance company, viz., the 3rd respondent had raised a contention that the injuries were caused due to the carelessness of the petitioner. Such a contention was not available to the 3rd respondent in view of Section 96(2) of Motor Vehicles Act. Moreover, the learned counsel for the 3rd respondent did not cross-examine the petitioner on this aspect. Second respondent was ex parte.

6. The driver of the bus must ensure sufficient space between the bus and other objects. A passenger cannot be held guilty of contributory negligence when in the normal course any portion of his body is outside the bus, even in case it is taken for arguments sake that the claimant put his hand on the side window of the bus. [See Delhi Transport Undertaking and Another Vs. Krishna Wanti and Another, ;

Kerala State Road Transport Corporation Vs. Madhavi Anuna and Another and Santosh and Others Vs. General Manager, M.P.S.R.T.C. and Another,]. Therefore, the finding of the learned Tribunal that the claimant was also negligent was not justified. That finding is vacated.

7. The award of the Tribunal is accordingly modified. Petitioner is entitled to get Rs. 67,980/- as compensation with 12 percent interest from the date of petition till the date of deposit and proportionate costs from respondent Nos. 1 and 2. The 3rd respondent insurer is liable to pay the amount.

8. The appeal is allowed and the award of the Tribunal is modified as indicated above. No costs.