(2013) 11 KL CK 0039

In the High Court Of Kerala

Case No : M.A.C.A. No. 3079 of 2009

Bineesh P.B.	APPELLANT
Vs	
A. Vidhyasagar, C.L. Joy and The Manager, National Insurance Co. Ltd.	RESPONDENT

Date of Decision : 05-11-2013

Acts Referred:

Citation : (2013) 11 KL CK 0039

Hon'ble Judges : S. Siri Jagan, J;K. Ramakrishnan, J

Bench : Division Bench

Advocate : V. Binoy Ram, for the Appellant; E.M. Joseph, for R3, for the Respondent

Final Decision : Disposed Off

Judgement

S. Siri Jagan, J.—The appellant filed O.P. (M.V.). No. 939/2005 before the Motor Accidents Claims Tribunal, Irinjalakuda, claiming compensation for the injuries and consequent disability suffered by him in an accident caused by the negligent driving of a vehicle owned and driven by respondents 1 and 2 and insured with the 3rd respondent. The Tribunal, after finding negligence on the part of the driver of the vehicle, awarded compensation under various heads as follows:

Dissatisfied with the quantum of compensation awarded by the Tribunal, the appellant has filed this appeal seeking enhanced compensation.

The accident was on 7.6.2005. The appellant was 24 years old at that time. He is a mason by profession. He claimed Rs. 6,000/- as his monthly income. The Tribunal fixed Rs. 2,000/- on a notional basis. The appellant submits that that is on the lower side taking into account the date of the accident and his avocation. He was hospitalised for 54 days. The appellant produced Ext. A9 disability certificate certifying 16% disability. But the Tribunal accepted only 8% for the purpose of calculating loss of earning capacity, which is on the lower side is the contention raised. It is further submitted that the compensation awarded for loss of earnings, pain and sufferings and loss of amenities in life is also on the lower side.

2. The learned counsel for the insurance company would dispute the claims of the appellant. He would submit that the Tribunal has considered every aspect of the matter in the right perspective and the Tribunal has awarded just and fair compensation under all heads.

3. We have considered the rival contentions in detail. We are of opinion that despite absence of evidence, a mason aged 25 years, in 2005, can be expected to fetch much more than Rs. 2,000/- per month as income going by the general standards in our society prevailing then. Therefore, we re-fix the income as Rs. 3,000/- per month. The assessment of loss of earning capacity cannot be a mere arithmetical exercise by converting the disability certified by the doctor into a whole body disability. It has to be decided based on the effect of the disability on the avocation of the claimant and his capacity to earn income with that disability. In this case, in Ext. A9 disability certificate, which has been accepted by the Tribunal, it is certified as follows:

1. He has 2.3 cm. Shortening in (R) leg.

2. He has malunited fracture of femur (R)

3. He has stiffness of (R) hip.

4. He has healed fracture of tibial spine.

5. He has ACL Laxity (Anterior cruciate ligament laxity) grade II in R knee.

He has got temporary disability for 1st 6 months. Permanent disability (for whole body) is assessed as 16% (Sixteen). Disability is as MC Bride.

The appellant is a mason by profession. He will have to sit, squat and also climb buildings for the purpose of his avocation. There cannot be any doubt whatsoever that these difficulties would affect his earning capacity to a much larger extent than 16%. Therefore, we are of opinion that the entire 16% should have been taken into account for the purpose of calculating loss of earning capacity. Since the appellant was 25 years old at the time of accident, the multiplier to be adopted is 18 as per the decision in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, Calculated on that basis, the appellant would be entitled to compensation of Rs. 1,03,680/- (Rs. 3,000 x 12 x 18 x 16%) instead of Rs. 34,600/- awarded by the Tribunal towards loss of earning capacity. When we have increased the monthly income to Rs. 3,000/-, the appellant would be entitled to additional compensation of Rs. 6,000/- towards loss of earnings. Considering the fact that the appellant was hospitalised for 54 days and he had undergone operation, we increase the compensation for pain and sufferings to Rs. 25,000/- from Rs. 17,000/-. We are also inclined to award Rs. 30,000/- towards loss of amenities in life considering the very serious nature of the disability suffered by the appellant, which will certainly affect his personal life to a great extent. Adding together, the appellant would be entitled to additional compensation of Rs. 1,08,080/- over and above what has been awarded by the Tribunal. This amount would carry interest at the rate of 9% per annum from the date of the claim petition till date of payment. Two months'' time is granted to the insurance company to deposit this amount as well.

With the above modification of the impugned award of the Tribunal, the appeal is disposed of.