
(2014) 01 KL CK 0055

In the High Court Of Kerala

Case No : M.A.C.A. No"s. 206 and 207 of 2011

Denny Abraham George

APPELLANT

Vs

M.K. Rajan and The National Insurance Co. Ltd.

RESPONDENT

Date of Decision : 01-01-2014

Acts Referred:

Citation : (2014) 01 KL CK 0055

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

Bench : Division Bench

Advocate : Vadakara V.V.N. Menon, for the Appellant; E.M. Joseph, for R2, for the Respondent

Final Decision : Dismissed

Judgement

S. Siri Jagan, J.—The 2nd respondent driver in O.P. (M.V.). Nos. 2401/1997 and 2405/1997 before the Motor Accidents Claims Tribunal, Ernakulam, is the appellant herein. He was driving a motor car. It collide with a motor cycle driven by the claimant in O.P. (M.V.). No. 2401/1997, in which, the claimant in O.P. (M.V.). No. 2405/1997 was a pillion rider. Both of them suffered injuries in the accident. They filed O.P. (M.V)s. claiming compensation for the injuries and consequent disability suffered by them on account of the accident. The Tribunal found that the accident occurred because of the negligent driving of the car by the appellant herein and awarded compensation in the two original petitions as follows, by a common award:

O.P. (M.V.). No. 2401/1997:

O.P. (M.V.). No. 2405/1997:

The insurance company was exonerated from the liability to satisfy the award, since, at the time of accident, the car driven by the appellant was not covered by insurance. The appellant challenges the award both on the question of negligence as well as quantum. The first contention raised by the appellant is that the Tribunal has not appreciated the evidence available in the cases, in the right

perspective. It is submitted that the Tribunal could not have found that the accident occurred because of the negligence of the appellant herein. It is pointed out that in O.P. (M.V). No. 2405/1997, one Sri. M.K. Rajan was impleaded as additional 4th respondent, who was also negligent in causing the accident, which was not properly considered by the Tribunal. It is also submitted that as per Ext. B1 judgment, the appellate court acquitted the appellant in Criminal Appeal No. 243/2001, relating to the same accident. Therefore, according to the appellant, the Tribunal went wrong in finding that the accident occurred because of the negligence of the appellant in driving his car.

2. As far as the quantum of compensation is concerned, the appellant would contend that the claimants had not proved their income by adducing any cogent evidence and the documents relating to medical expenses are not reliable, which were concocted to suit the claims of the claimants. The appellant, therefore, challenges the quantum awarded as well.

3. We have considered the rival contentions in detail.

4. At the outset we note that, apart from producing Ext. B1 judgment in Criminal Appeal No. 243/2001, the respondents in the two claim petitions, which include the appellant as well, had not adduced any evidence whatsoever. Both the claimants were examined as PWs 1 and 2. They had produced Ext. A1 copy of the FIR as well as Ext. A4 copy of the scene mahazar prepared by the police in respect of the accident in question. The scene mahazar showed that the accident occurred on the wrong side of the appellant far to his wrong side. The appellant did not choose to examine himself to refute the evidence available on record. As such, we are not satisfied that the finding entered by the Tribunal on the basis of the documentary evidence on record, particularly the police record, can in any way be challenged by the appellant. We, therefore, confirm the finding of the Tribunal that the accident occurred solely because of the negligence of the appellant in driving his car.

5. As far as the quantum of compensation is concerned, the first contention of the appellant is regarding the income fixed for the claimants. The claimants had given oral evidence to prove that they were employed in a company. But the Tribunal fixed only Rs. 1,500/- as the monthly income of both. The accident was on 23.3.1997. Even the notional income, Rs. 1,500/- cannot be said to be on the higher side as far as the monthly income is concerned insofar as in 1994, in the 2nd Schedule to the Motor Vehicles Act, notional income of a non-earning member is fixed as Rs. 15,000/- per annum. Therefore, there is no merit in the contention of the appellant that the monthly income fixed for the claimants is on the higher side. The claimant in O.P. (M.V). No. 2401/1997 had produced Ext. 10 series medical bills for Rs. 1,29,868.97. Out of the same, the claimant himself had admitted that Rs. 40,000/- had to be reduced, since his claim is not correct in respect thereof. The Tribunal after examining the other bills also, found that a total of Rs. 41,520/- including the Rs. 40,000/- admitted by the claimant cannot be accepted as treatment expenses spent by the claimant in that O.P. After

deducting the same, only Rs. 90,000/- has been awarded towards treatment expenses. We are not inclined to accept the contention of the appellant that those bills are not liable to be relied upon. The claimant in O.P. (M.V). No. 2401/1997 suffered the following injuries:

1. Abrasions on the chin (R) leg.
2. Bruising on (L) cheek.
3. Laceration on (R) leg.
4. Contusions on (R) thigh (R) leg.
5. Fracture of 5/6 teeth.
6. Comminuted fracture of shaft of (R) femur.
7. Open fracture both bones (R) leg.

He has suffered 18% permanent disability as well. The appellant did not choose to challenge the documents produced by the claimants or to effectively cross examine the claimants in respect thereof. That being so, we do not find any infirmity in the quantum of compensation awarded by the Tribunal. We have no reason to find that the amounts awarded are in any way excessive.

The claimant in O.P. (M.V). No. 2405/1997 suffered the following injuries:

1. Contusions on occipital region.
2. Multiple abrasions on (R) knee, (R) leg.
3. Comminuted fracture both bones (R) leg.

Considering these injuries, the amounts awarded for the claimant in that O.P. also appear to be just and proper. In the above circumstances, we do not find any merit in the two appeals and accordingly, both of them are dismissed.