(2021) 10 KL CK 0153

In the High Court Of Kerala

Case No : MACA NO. 3773 Of 2016

Devarajan S/o Kochukunjan Nadar — APPELLANT

Vs

S.Thanumalayaperimal Subramania Pillali — RESPONDENT

Date of Decision : 25-10-2021

Acts Referred:

Citation : (2021) 10 KL CK 0153

Hon'ble Judges : T.R. Ravi, J

Bench : Single Bench

Advocate : Biju Balakrishnan, V.S.Rakhee, Sushya Rajan, K.Sherin Mohan

Final Decision : Allowed

Judgement

T.R. Ravi, J

1. The appellant who is a headload worker, was involved in a motor accident on 19.06.2004 while unloading marble pieces. He was 35 years old at that time. He suffered serious injuries and was subjected to emergency laparotomy on 20.06.2004. There was blood in the peritoneal cavity and laceration of stomach, tail of pancreas and jejunum. He was treated in the Intensive Care Unit for several days. The permanent disability of the petitioner was assessed at 50% as per as McBride Scale. However, the Doctor was not examined in the proceedings before the Tribunal. The Tribunal considered the grievous nature of the injuries sustained by the appellant and assessed permanent disability of the petitioner at 40%. The compensation under the head permanent disability was computed by taking a notional income of Rs.3,000/- per month. A total amount of Rs.4,57,940/- was awarded as compensation by the Tribunal.

2. Aggrieved by the compensation awarded by the Tribunal, the appellant has filed this appeal. The main contention of the appellant is that the Tribunal went wrong in taking the notional income at Rs.3,000/-. It is contended that going by the decision in Ramachandrappa v. Manager, Royal Sundaram Alliance Insurance Co.Ltd., the notional income ought to have been taken as Rs.4,500/- per month.

Another contention of the appellant is that loss of earnings were calculated by treating the period as one year. According to the counsel for the appellant, having regard to the long period of hospitalization of 150 days spread over 3 years, the amount granted towards loss of earnings ought to be for more than one year. The counsel also contended that the expenses for future treatment granted by the Tribunal is meager. It is also submitted that the amount awarded as compensation for pain and sufferings is also on the lower side.

3. Heard Sri.Biju Balakrishnan, learned counsel for the appellant and Smt.Sherin Mohan.K, learned counsel for the 2nd respondent.

4. Having heard the counsel for the appellant and the counsel for the Insurance Company, I am of the opinion that the amount awarded by the Tribunal is liable to be increased. The compensation for continuing disability has to be worked out on the basis of a notional income of Rs.4,500/-, which will come to Rs.3,45,600/-. After reducing the amount of Rs.2,30,400/- awarded by the Tribunal, an additional amount of Rs.1,15,200/- has to be awarded. The loss of earning is to be reassessed on the basis of 18 months earnings at the rate of Rs.4,500/-, which would come to Rs.81,000/-. After reducing the amount of Rs.36,000/-, granted by the Tribunal, the appellant will be entitled to a further sum of Rs.45,000/-. The compensation for pain and sufferings has to be increased to Rs.1,00,000/-, ie; an increase of Rs.50,000/-. So, also having regard to the grievous nature of injuries and the continued treatment for over 4 years after the accident, I am of the opinion that the expenses for future treatment should be increased to Rs.30,000/-. After deducting the amount of Rs.10,000/- awarded by the Tribunal, the appellant will be entitled to a further sum of Rs.20,000/- under that head.

5. In the result, the appeal is allowed awarding an additional compensation of Rs.2,30,200/- (Rupees Two Lakh Thirty Thousand Two Hundred only) with interest at the rate of 9% per annum from the date of filing of the petition (02.11.2004) till the date of realisation, with proportionate costs. There was a delay of 1885 days in fling the appeal. The delay was condoned by this Court by order dated 31.10.2019, on condition that in case enhanced compensation is granted in the appeal, the appellant will not be entitled to interest on the said amount for the period of delay. The interest payable on the enhanced compensation shall be hence excluding the period of 1885 days. The 2nd respondent insurer shall deposit the additional compensation granted in this appeal along with interest and proportionate costs, before the Tribunal within two months from the date of receipt of a certified copy of this judgment, after deducting any amount to which the appellant is liable towards balance court fee and legal benefit fund. The disbursement of the compensation to the appellant shall be in accordance with law.