
(2012) 03 KL CK 0107
In the High Court Of Kerala
Case No : M.A.C.A. No. 1311 of 2007

Devayani

APPELLANT

Vs

P.A. John and United India Insurance Co. Ltd.

RESPONDENT

Date of Decision : 23-03-2012

Acts Referred:

Citation : (2012) 03 KL CK 0107

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

Bench : Division Bench

Advocate : Sajeev Kumar K. Gopal and Sri. Binoy Vasudevan, for the Appellant;
P.K. Santhamma, for the Respondent

Final Decision : Allowed

Judgement

Ramakrishna Pillai, J.—A coolie aged 42 who was knocked down by a motorcyclist on 04/10/03 approached the Tribunal claiming a sum of Rs. 1,45,000/- as compensation against which the learned Tribunal awarded a sum of Rs. 33,574/- , the adequacy of which is under challenge in this appeal. We have heard the Learned Counsel for the appellant and the Learned Counsel for the 2nd respondent Insurance Company.

2. The appellant who sustained injuries was admitted to Moulana Hospital, Perinthalmanna where she had undergone treatment for four days. X-ray revealed that she had sustained compression fracture to L1 vertebrae. Towards pain and sufferings, the learned Tribunal awarded a sum of Rs. 10,000/- which according to the Learned Counsel for the appellant is on the lower side. We are of the view that the appellant might have suffered pain for a long period on account of the compression fracture to her L1 vertebrae. So we are awarding an additional sum of Rs. 5,000/- on that count.

3. Presumably the appellant might have been compelled to take rest and might not have been able to do any work at least for a period of three months. But no amount is seen awarded by the learned Tribunal towards compensation for loss

of amenities during the period of treatment and during the period of convalescence. Hence, we award a sum of Rs. 10,000/- on that count.

4. It was alleged in the claim petition that the appellant was earning a monthly income of Rs. 2,500/- . The learned Tribunal has adopted only a sum of Rs. 2,000/- as the monthly income of the appellant. We notice that the accident was of the year, 2003. So presumably the appellant might have earned at least Rs. 2,500/- per month by engaging herself in any job. As already pointed out, the injuries might have compelled her to take rest at least for a period of three months and towards loss of earnings for the said period we award a sum of Rs. 7,500/- as compensation.

5. Towards bystander's expenses, a sum of ` 600/- was awarded. As the accident was of the year, 2003, we are of the view that she is entitled to get bystander's expenses at the rate of Rs. 200/- per day. Hence, the appellant becomes eligible to get an additional sum of Rs. 200/- on that count.

6. Ext.A7 Disability Certificate was pressed into service to show that the appellant is having a permanent disability of 5%. The Learned Counsel for the 2nd respondent Insurance Company would contend that though Ext.A7 was admitted in evidence the same was not proved and hence, the percentage of disability made mention of in Ext.A7 certificate cannot be taken into account for arriving at the quantum of permanent disability. However taking into account the fact that the appellant had sustained compression fracture to her L1 vertebrae, we are of the view that the percentage of disability made mention of in Ext.A7 certificate is reasonable and accordingly we adopt the same for arriving at the quantum of compensation for permanent disability.

7. It was pointed out by the Learned Counsel for the appellant that while arriving at the compensation for permanent disability the learned Tribunal has deducted one third of the income in consideration of the expenses which the appellant would have incurred. Such a procedure adopted by the learned Tribunal is incorrect and the same has to be interfered with. When compensation for permanent disability is recalculated fixing the monthly income of the appellant at Rs. 2,500/- and adopting 5% disability it will come to Rs. 22,500/- . As the learned Tribunal has awarded a sum of Rs. 12,006/- only the appellant will be entitled to get an additional sum of Rs. 10,494/- which can be rounded off to Rs. 10,450/- .

8. Thus in total the appellant is entitled to get a sum of ` 33,150/- over and above what has been awarded by the learned Tribunal. The additional amount awarded will carry interest at the rate of 7% per annum from the date of the claim petition till realization. The appeal is allowed as above. The impugned award shall stand modified as above.