

(2015) 03 KL CK 0261
In the High Court Of Kerala
Case No : M.A.C.A. No. 1007 of 2013

Dineshan K.

APPELLANT

Vs

The District Insurance Officer, Kerala State Insurance
Department

RESPONDENT

Date of Decision : 06-03-2015

Acts Referred:

Citation : (2015) 03 KL CK 0261

Hon'ble Judges : T.R. Ramachandran Nair, J;P.V. Asha, J

Bench : Division Bench

Advocate : M.V. Amaresan and K. Reghunathan, for the Appellant; P.A. Reziya, Government Pleader, Advocates for the Respondent

Final Decision : Allowed

Judgement

P.V. Asha, J—The appellant met with a motor vehicle accident on 18.2.2007, when the motor cycle on which he was proceeding from Mattannur to Kuthuparamba was hit by an autorickshaw. He sustained very severe injuries and was taken to Koyili Hospital, Kannur and discharged on 20.2.2007. On the very same day he was admitted to A.J. Hospital, Mangalapuram and he underwent treatment there till 8.3.2007.

2. He incurred disability on account of the injuries which was assessed as 25% by the Medical Board. The appellant was aged 34 at the time of the accident. He claimed that he was working as a spray painter. It was claimed that he was earning an amount of Rs. 7,500/- per month. He filed claim petition for compensation to the tune of Rs. 10 lakh. The Tribunal awarded a sum of Rs. 2,76,900/- as compensation. This appeal is filed seeking enhancement of compensation.

3. We heard learned counsel on both sides.

4. Learned counsel for the respondent submitted that no enhancement is required and the amount awarded is just and reasonable.

5. The appellant sustained the following injuries.

- 1) Comminuted fracture right fronto, temporo parietal bones with inward displacement and bone defect within.
- 2) Fracture fragment is seen piercing right eye ball.
- 3) Contusion in the right fronto-temporo parietal region with herniation of the cerebral parenchyma, through the bony defect.
- 4) Extra axial hypertensity in right temporo parietal convexity.
- 5) Subarachnoid haemorrhage.
- 6) Fracture maxilla, Fracture zygoma, nose ethomoid.

6. He underwent treatment for a period of 19 days. During this period, he had to undergo four surgeries. On 18.2.2007, he was operated for depressed fracture in brain. On 23.2.2007, open reduction of fracture, maxilla and zygoma & plating were done. Even after that the appellant is having running eyes. His eyelid cannot be closed properly because the skin goes up. He suffered disfigurement also on the right fronto temporal region. The disfiguration is visible on the right side. Apart from that the eye has slightly gone inside. The Doctor who was examined as PW3, deposed that the appellant has become epileptic and loss of memory on account of the injury sustained and that he required life long treatment. The disability was assessed as whole body disability of 25%.

7. The appellant is engaged in spray painting. He claimed that he was drawing a salary of Rs. 7,500/- per month. But the Tribunal has fixed it as Rs. 3,000/- per month. Therefore, a sum of Rs. 1,44,000/- was awarded under the head permanent disability and Rs. 12,000/- towards loss of earnings. The amount awarded under various heads are stated to be thoroughly inadequate. It is seen that after discharge from the hospital, he had to continue treatment and that he requires further treatment. Therefore, we re-fix the compensation awarded by the Tribunal.

8. We are of the view that the income fixed is too low. Going by the nature of the work in which he was engaged, we fix Rs. 5,000/- as the monthly income. The compensation under the head of permanent disability will therefore, come to Rs. 2,40,000/- (Rs. 5,000x12x16x25/100). The Tribunal has not awarded the entire amount covered by medical bills. A sum of Rs. 87,500/- alone was awarded towards medical bills. We award a sum of Rs. 90,000/- towards medical expenses. The Tribunal has awarded a sum of Rs. 4,000/- towards loss of amenities and inconveniences. The appellant has incurred disability to the tune of 25%. He suffered disfigurement also. On account of the running eyes and disability incurred, appellant will not be able to enjoy the normal amenities through out his life. Therefore, we award a sum of Rs. 60,000/- towards loss of amenities. Towards pain and suffering, the Tribunal has awarded a sum of Rs. 20,000/- alone. Having regard to the nature of injuries and considering the

prolonged treatment and the fact that he had to undergo 4 surgeries, we award a sum of Rs. 50,000/- towards pain and suffering. Reckoning his income as Rs. 5,000/-, we award a sum of Rs. 20,000/- towards loss of earnings. He was treated as inpatient for a period of 19 days. But the Tribunal awarded only Rs. 1,900/- alone as bystander expenses. We enhance it as Rs. 4,750/- at the rate of Rs. 250/- per day. We award a sum of Rs. 3,000/- towards extra nourishment. As appellant was undergoing treatment at Kannur and Mangalapuram and had to undertake several visits, we award a sum of Rs. 6,000/- towards transportation expenses. Considering the fact that he has suffered disfigurement, on the eyes and front temporal region, we award a sum of Rs. 40,000/- towards the same. As the appellant requires life long treatment as found in Ext.X1 certificate, we award a sum of Rs. 50,000/- towards future treatment. Accordingly, we modify the award as follows:

9. Thus the appellants will be entitled to a total compensation of Rs. 5,64,250/-. The enhanced compensation will carry interest at the rate of 9% p.a from the date of petition in the light of the judgment of the apex court in *Supe Dei (Smt.) & Ors. v. National Insurance Co. Ltd. and Anr.* [(2009)4 SCC 513].

10. The Insurance Company is directed to deposit the entire amount, less the amount already deposited, within a period of three months from the date of receipt of a copy of this judgment.

11. The court fee if any in deficit shall be recovered by the Tribunal before disbursing the amount to the claimant. The appeal is allowed accordingly. Parties shall bear the respective cost.