

(2013) 07 KL CK 0100
In the High Court Of Kerala
Case No : MACA. No. 2659 of 2008 (E)

Francis John Alappatt

APPELLANT

Vs

P.B. Jayan, Arunan P.B. and The Branch Manager

RESPONDENT

Date of Decision : 03-07-2013

Acts Referred:

Citation : (2013) 07 KL CK 0100

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

Bench : Division Bench

Advocate : V. Binoy Ram, for the Appellant; M. Lalitha Nair, for the Respondent

Final Decision : Disposed Off

Judgement

S. Siri Jagan, J.—The appellant is the claimant in O.P. (MV) No. 1410/2003 before the Motor Accidents Claims Tribunal, Irinjalakuda. He claimed 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:

Compensation for disability

Rs. 32,000/-

Compensation for discomfort and loss of amenities

Rs. 15,000/-

Compensation for pain and suffering

Rs. 20,000/-

Medical expenses

Rs. 53,700/-

Expenses in the hospital

Rs. 1,500/-

Transportation expenses

Rs. 1,000/-

Loss of salary etc.,

Rs. 87,000/-

Total

Rs. 2,10,200/-

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

The contention of the appellant is that the amounts of compensation awarded for loss of earning capacity, loss of amenities and for pain and suffering, are on the lower side. According to the appellant, the appellant produced disability certificate certifying 15% disability. But the Tribunal accepted only 6% for calculating loss of earning capacity, after the date of superannuation. According to the appellant, the entire disability certified by the doctor ought to have been accepted for the purpose of calculating loss of earning capacity. It is submitted that considering the injury suffered by the appellant and the disability, the compensation for loss of amenities and pain and suffering is on the lower side.

2. We have heard the learned counsel for the Insurance Company also. The appellant is a bank manager. He was 52 years old at the time of the accident. He has no case that he lost his employment on account of the injuries and disability suffered by him or that his salary has been reduced on account of the injuries in the accident. He has also not cared to prove how the disability has affected his work. That being so, we are of opinion that the entire 15% cannot be accepted for the purpose of calculating loss of earning capacity. We are inclined to adopt 10% for this purpose. We are inclined to take 9 as the multiplier in view of the fact that the appellant was due to retire from service on attaining the age of 58 years. Calculated on that basis, the appellant would be entitled to Rs. 43,200/- towards loss of earning capacity instead of Rs. 32,000/-. The difference would be Rs. 11,200/-. We are not inclined to enhance compensation under any of the other heads.

Consequently, the appellant would be entitled to additional compensation of Rs. 11,200/- over and above what has been awarded by the Tribunal. That amount would carry interest @ 9% per annum from the date of the claim petition till the date of payment. The 3rd respondent Insurance Company is directed to deposit that amount also within two months.

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