

(2013) 01 KL CK 0150
In the High Court Of Kerala
Case No : M.A.C.A. No. 3 of 2007 (A)

George

APPELLANT

Vs

E.T. Thomas, Residing at Ellikkal House P.O. Irinjalakuda,
Thrissur District, Jacob and The United India Insurance
Company Limited, Irinjalakuda Thrissur District

RESPONDENT

Date of Decision : 09-01-2013

Acts Referred:

Citation : (2013) 2 ACC 731 : (2013) 1 ILR (Ker) 559 : (2013) 1 KHC 453 :
(2013) 2 KLJ 193 : (2013) 1 KLT 575

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

Bench : Division Bench

Advocate : T.C. Suresh Menon, Sri. Sreekanth K.R., Sri. Jibu P. Thomas and Sri.
Sunil J. Chakkalackal, for the Appellant; S. Arun Raj, for R3, for the Respondent

Judgement

S. Siri Jagan, J.—The injured in a motor accident is the appellant herein. He filed O.P. (MV) No. 2229/01 before the Motor Accident Claims Tribunal, Thrissur, claiming compensation from the respondents herein for the injuries and consequent disability sustained by the appellant on account of negligent driving of the vehicle owned, driven and insured by the respondents. After finding negligence on the part of the driver of the offending vehicle, the Tribunal awarded a total compensation of Rs. 1,43,900/- (Rupees One Lakh Forty Three Thousand Nine Hundred only) under various heads as follows:-

i)

Compensation for loss of earnings

Rs. 8,000.00

ii)

Expenses for transportation

Rs. 1,000.00

iii)

Compensation for extra nourishment

Rs. 1,000.00

iv)

Compensation for damage to clothing

Rs. 500.00

v)

Medical expenses for treatment

Rs. 86,700.00

vi)

Expenses of a by stander

Rs. 2,500.00

vi)

Compensation for pain and suffering

Rs. 15,000.00

vii)

Compensation for physical disability

Rs. 19,200.00

viii)

Compensation for loss of amenities

Rs. 10,000.00

TOTAL

Rs. 1,43,900.00

The appellant submits that considering the injuries and consequent permanent disability sustained by the appellant, the compensation awarded is palpably inadequate. He points out that he suffered the following injuries, as narrated in the Judgment itself.

Sub Trochanteric Fracture (L), Fracture of left tibial condyle laterally, Fracture 1st metatarsal bone, lacerated to left patella medially 10 X 8 X 4 cm, Lacerated wound frontal area (R) side 5x 4x 1cm, Contusion left knee and Abrasion (R) cheek.

(mistakes in the medical terms excepted)

On account of the said injuries, the doctor who treated him certified permanent disability of 20%. But the Tribunal arbitrarily deducted 10% and awarded compensation only for 10% disability, which is erroneous is the contention of the appellant. It is further submitted that despite the very serious injuries and consequent disability suffered, the amount awarded for loss of amenities is only Rs. 10,000/-, which is inadequate. It is further contended that no amount has been awarded for loss of earning capacity, which ought to have been granted. The counsel relies on the decision of the Supreme Court in K. Suresh Vs. New India Assurance Company Ltd. and Another, wherein the Supreme Court has held that in respect of injuries leading to permanent disability, compensation is payable both for disability as well as for loss of earning capacity suffered by the injured on account of the disability. It is further submitted that although for the purpose of reducing the permanent disability by =, the Tribunal relied on the statement in the medical certificate that another surgery is needed for removing the implant, thereby accepting the fact that further surgery and treatment is needed, no amounts have been awarded for future treatment. Therefore, the counsel for the appellant seeks enhancement of compensation on all these heads.

We have considered the contentions of the parties in detail. It is true that in Suresh's case (supra) the Supreme Court has held that compensation has to be awarded under both heads namely permanent disability as well as loss of earning power in motor accident claims involving permanent disability. But normally, the Tribunals award compensation for disability under two heads viz; either for disability or for loss of earning power and for loss of amenities. Going by the reasoning in the Judgment of the Supreme Court, what is contemplated is compensation for loss of earning power and compensation for disability which is the same as compensation for loss of amenities. There are two consequences for permanent disability. That is, reduction in the earning power of the injured and the reduction in his physical capacity to go about his daily routine which every human being has to do every day personally in the course of his day to day activities. The loss of earning power is essentially connected to the impact of the disability on the avocation which the injured is engaged in, and therefore compensation thereof has to be assessed taking into account such impact and not merely on the basis of the % of physical disability assessed medically, unless such assessment is with reference to the impact of the disability on his capacity to continue his avocation as before. Compensation for the physical disability has to be assessed based on the adverse impact the disability has on his ability to do his daily routine, which he has to basically do as other human beings do. This is also termed as loss of ability to enjoy the amenities of life. Therefore, although often people refer to three heads for assessing compensation on account of permanent disability as, (1) compensation for physical disability, (2) compensation for loss of enjoyment of amenities of life and compensation for loss of earning power, (1) and (2) essentially comes under the same head and therefore compensation on account of physical disability caused by the accident has to be assessed only under two heads, viz; (1) for physical disability or loss of

amenities of life and (2) loss of earning power. In this case, compensation has been awarded to the appellant under two heads, viz; disability and loss of amenities. Therefore, although the Tribunal has stated that the appellant is not entitled to get any amount by way of compensation for loss of earning power, because he was given compensation for disability, we are of opinion that what has been awarded by the Tribunal is compensation for loss of earning capacity and disability/loss of amenities. As such, we do not think that the appellant is entitled to compensation because of the permanent disability suffered by him under a third head.

2. But at the same time, we are inclined to increase the compensation payable to the appellant under the two heads. As pointed out, the Tribunal himself found that after the implant, it cannot be said whether the disability would increase or decrease. In such state of uncertainty, we do not think that it was justifiable on the part of the Tribunal to reduce the disability by. Therefore, we are of opinion that the appellant should have been given compensation for loss of earning power for 15% disability. Under this head, the appellant would be entitled to a further compensation of Rs. 9,600/- (Rupees Nine Thousand Six Hundred only) in addition to what has been assessed by the Tribunal.

3. We are also of further opinion that considering the injuries and consequent disability suffered by the appellant, the compensation awarded for loss of amenities in life is too low. We are inclined to award Rs. 5,000/- (Rupees Five Thousand only) more under this head. We find considerable substance in the contention of the appellant that after having found that the appellant has still to undergo another surgery for removing the implant, compensation should have been awarded for future medical expenses. We are inclined to award Rs. 10,000/- (Rupees Ten Thousand only) more under this head. Altogether, in addition to the amounts already awarded by the Tribunal, the appellant is entitled to get Rs. 24,600/- (Rupees Twenty Four Thousand Six Hundred only) more, as additional compensation. The respondents are liable to pay the same with 9% interest from the date of the claim petition till the date of payment. The 3rd respondent Insurance Company is directed to deposit the said amount before the Tribunal within two months.

The M.A.C.A. is partly allowed as above.