(2010) 08 KL CK 0252

In the High Court Of Kerala

Case No : M.A.C.A. No. 302 of 2010

Jijesh. P.K. APPELLANT

Vs

Mohammed Ali K. and National Insurance Co. Ltd. RESPONDENT

Date of Decision : 10-08-2010

Acts Referred:

Citation : (2010) 08 KL CK 0252

Hon'ble Judges : M.N. Krishnan, J

Bench : Single Bench

Advocate : K.M. Jamaludheen, for the Appellant; Sarah Salvy, for the Respondent

Judgement

M.N. Krishnan, J.—This is an appeal preferred against the award of the Claims Tribunal, Kozhikode in OP(MV) No. 503/2005. The claimant, a 21 year old coolie, sustained injuries in a road accident and the Tribunal has awarded him a compensation of Rs. 12,250/- and exonerated the insurance company from the liability. It is against the exoneration of the company as well as the quantum, the claimant has come up in appeal.

2. Heard both sides. Let me first consider about the quantum. The nature of injury sustained is really a grievous one. It is revealed that he had sustained a lacerated wound with avulsion of the right foot of 12 x 3 x 6 cms ie., a heel injury exposing the tendon. He was treated as an inpatient in the Medical College Hospital, Kozhikode for a period from 13.2.2003 to 14.3.2003. The bills would reveal that he sustained a heel pad avulsion with deep tendon injury. Local anesthesia was used for suturing and the claimant also developed mild infections after the operation. So though there is no bony injury, the injury sustained is a very serious nature and when it is on the heel, it takes long time for heeling and it would have certainly affected this 21 year old labourer in his day today life. He was in the hospital for 30 days and I feel that it is a fit case where an amount of Rs. 3,000/- at least should have been awarded towards bystanders expenses. The nature of injury, infection etc would reveal the agonising pain which the

claimant had undergone and therefore, I enhance pain and suffering compensation by Rs. 3,000/- and I also award a sum of Rs. 5,000/- for loss of amenities and enjoyment in life. Certainly this young man would not have been in a position to work for 3-4 months and even in the first information statement it is seen that he is working and therefore fixing notional income at Rs. 2,500/- when three months loss of earnings is calculated, the claimant will be entitled to an additional amount of Rs. 6,500/- towards loss of earnings. Therefore, I hold that the claimant is entitled to an additional compensation of Rs. 17,500/-.

3. Now the next question is regarding exoneration of the insurance company from liability. Admittedly the claimant was a pillion rider in a two wheeler and the vehicle was covered by a package policy. By virtue of the clarificatory circular issued by the Insurance Regulatory and Development Authority dated 16.11.2009, persons carried in a two wheeler are covered under the terms and conditions of the standard motor package policy. Further, the conditions had come up for consideration before the two Division Benches of this Court reported in New India Assurance Co. Ltd. Vs. Hydrose and Others, and in Mathew Vs. Shaji Mathew and Another, . After considering the clauses, this Court held that terms and conditions of the policy cover the risk of a pillion rifer and therefore, it has to be held that insurance company is liable and cannot be exonerated from the liability.

4. Therefore, the MACA is allowed and the claimant is awarded an additional compensation of Rs. 17,500/- with 7% interest on the said sum from the date of petition till realisation. It is also held that the insurance company is liable to pay the original amount awarded as compensation with interest at 7%. The respondent insurance company is directed to deposit the said amount within a period of 60 days from the date of receipt of a copy of this judgment.

Disposed of accordingly.

