(2012) 02 KL CK 0152

In the High Court Of Kerala

Case No : MACA No. 252 of 2012 (A) and OP (MV) 3358 of 2003

Joby T.A. APPELLANT

Vs

Daison M.D. and United India Insurance Co. Ltd. RESPONDENT

Date of Decision : 29-02-2012

Acts Referred:

Citation : (2012) 02 KL CK 0152

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

Bench : Division Bench

Advocate : P.V. Chandra Mohan, for the Appellant; P. Jacob Mathew for R2, for the Respondent

Final Decision : Allowed

Judgement

Pius C. Kuriakose, J.—A wholesale vegetable merchant in Sakthan Thampuran Market, Thrissur complains that the learned Motor Accidents Claims Tribunal did not award him adequate compensation for the injuries sustained by him in a road traffic accident. Under the impugned award the learned Tribunal has found that the injuries occurred on account of the negligence of the rider of the scooter in which the appellant was travelling as a pillion rider in respect of which the 2nd respondent Insurance Company had issued a policy. As against a total claim of Rs. 4,38,000/-, the learned Tribunal awarded a sum of Rs. 1,64,200/- only. In the appeal it is urged that the compensation awarded under various heads, particularly under the head of disability is inadequate.

2. We have heard the submissions of Sri. P.V. Chandramohan, the learned counsel for the appellant and Sri. P. Jacob Mathew, the learned counsel for the Insurance Company. Sri. Chandra Mohan submitted that the learned Tribunal actually found that on the basis of documents produced by the appellant such as Income Tax returns and assessment orders, the appellant was drawing a monthly income of Rs. 6,500/- from the wholesale vegetable business which he was conducting in the Sakthan Thampuran Market. Nevertheless the learned Tribunal took only notional income of Rs. 2,500/- for arriving at the disability

compensation as well as compensation to be granted towards loss of earnings. The learned counsel submitted that the amounts awarded by the Tribunal towards other heads are inadequate. It was submitted that no compensation was awarded towards loss of amenities.

3. The learned Standing Counsel for the Insurance Company per contra would support the impugned award in all respects. It is submitted that there is no warrant for making any increase. There is no evidence to show that the wholesale vegetable business belonging to the appellant was discontinued on account of the accident.

4. We have given our anxious consideration to the rival submissions addressed at the Bar. We find no way to accept the argument of Sri. Chandramohan that for the purpose of determining the disability compensation and loss of earnings the sum of Rs. 6,500/- which was found by the learned Tribunal to be the monthly income of the appellant from his business should be adopted. As rightly argued by the learned counsel for the Insurance Company the evidence in the case falls short of holding that the wholesale business had to be closed down on account of the injuries sustained by the business. In the absence of such evidence, the learned Tribunal was justified in not adopting the monthly income. At the same time, we find that even though Ext.A8 disability certificate reported that the appellant sustained partial disability of 20%, the learned Tribunal would become inclined to take only 8% for the purpose of computing disability compensation.

5. Having gone through the nature of the injuries sustained by the appellant, we feel that there is justification for adopting the percentage of residual disability at 10%. When disability compensation is re-computed adopting the percentage of disability at 10%, the appellant will become eligible for an award of Rs. 9,600/- more than what was awarded by the Tribunal. We award that amount to the appellant.

6. We cannot approve the action of the learned Tribunal in not awarding any compensation towards loss of amenities. We award to the appellant Rs. 15,000/- towards loss of amenities. The Tribunal awarded loss of earnings taking only three months on the basis that the appellant lost his earning only for three months. According to us, the appellant could have been awarded loss of earnings for six months. Thus the appellant becomes eligible for Rs. 7,500/- more towards loss of earning. Hence, we do award the said amount to the appellant. Towards pain and sufferings, we are sure that the appellant has not been awarded eligible compensation. We award to the appellant Rs. 5,000/- more towards pain and sufferings. Towards transportation the appellant is eligible to be awarded Rs. 5,000/- more and we award to the appellant Rs. 5,000/- more towards transportation charges. There is some material in the case to indicate that the appellant requires future treatment. We feel that the appellant should be awarded some compensation towards future treatment. We award to the appellant Rs. 5,000/- towards future treatment. Thus, into we award to the appellant Rs. 46,600/- over and above what is awarded by the learned Tribunal.

This amount except the amount of Rs. 5,000/- awarded towards future treatment will carry interest at rates awarded by the Tribunal. The appeal is allowed. No costs.