(2011) 07 KL CK 0183

In the High Court Of Kerala

Case No : M.A.C.A. No. 83 of 2006-B

Jose	APPELLANT
Vs	
Kunhikanaran, P.V. Ananda Krishnan and National Insurance Co.Ltd.	RESPONDENT

Date of Decision : 26-07-2011

Acts Referred:

Citation : (2011) 07 KL CK 0183

Hon'ble Judges : R. Basant, J;N.K. Balakrishnan, J

Bench : Division Bench

Advocate : Kaleeswaram Raj, for the Appellant; N.J. Antony, for the Respondent

Final Decision : Allowed

Judgement

R. Basant, J.—Claimant is the Appellant. He claimed compensation for personal injuries suffered by him in a motor accident which took place on 01.02.1999. Against a total claim of Rs. 2.5 lakhs, the Tribunal awarded Rs. 89,000/- as compensation as per the details shown below:

i) Loss of earning: Rs. 4,500.00

ii) Medical expenses: Rs. 10,000.00

iii) Pain and suffering: Rs. 10,000.00

iv) Disability: Rs. 27,000.00

v) Loss of earning power: Rs. 30,000.00

vi) Transport charges: Rs. 500.00

vii) Extra nourishment: Rs. 2,000.00

viii) Bystander expenses: Rs. 5,000.00 -

Total: Rs. 89,000.00

2. The Appellant claims to be aggrieved by the impugned award. Called upon to explain, the learned Counsel for the Appellant first of all assails the compensation awarded under the head of loss of earning. The Appellant was an inpatient for a period of 42 days. Serious multiple injuries including multiple fractures were suffered. Crush injury right foot, fracture of the 6th, 7th, 8th and 9th ribs on the left side, amputation of right leg, communitted fracture right tarsal, metatarsals phalanx and head injuries are the injuries noted in the medical certificate. He had suffered permanent disability. The extent of disability is certified to be 30% as per the disability certificate issued by the doctor. The learned Counsel for the Appellant then contends that the monthly income of the Appellant, which was claimed to be Rs. 3,000/-, was accepted by the Tribunal only at Rs. 1,500/-. This is too low. He was a person aged above 61 years at the time of the accident. It is absolutely unrealistic to reckon the monthly income as Rs. 1,500/-. Even for a non earning person, the Second Schedule to the Motor Vehicles Act at Clause 6 permits a presumption of prudence from 1994 that the monthly income is Rs. 1,250/-. In these circumstances, the monthly income awarded deserves upward modification, contends the learned Counsel. We agree. We are satisfied that an amount of Rs. 2,500/- can safely be reckoned as the monthly income of the Appellant at the time of the accident.

3. Considering the nature of injuries, we are further of the opinion that it can safely be assumed that the Appellant must have been involuntarily unemployed in connection with his treatment and recovery for a period of 6 months. Even in the absence of better evidence, we reckon that assumption to be reasonable considering the nature of injuries, the period of treatment and the resultant disability.

4. The Tribunal, it is seen, has awarded an amount of Rs. 27,000/- as compensation for disability and a further amount of Rs. 30,000/- as compensation for loss of earning power. The Tribunal evidently appears to have been under confusion. The amount of Rs. 27,000/-, we find, is awarded under the head of reduction in earning capacity. Rs. 27,000/- is really the amount awarded under the head of loss of earning power by the multiplier-multiplicand method (ie. Rs. 1500 X 12 X 30/100 X 5 =27,000/-).

5. Physical disability suffered must certainly be assumed to have two fold reflection on the life of a person like the Appellant. It affects the earning capacity and it impairs the quality of enjoyment of life. The Tribunal, we find, has awarded the further amount of Rs. 30,000/- as compensation for loss of earning power in addition to the amount of Rs. 27,000/- awarded under the head of disability. It is very evident that the amount of Rs. 30,000/-, though awarded under the head of loss of earning power, is the amount awarded for loss of amenities in life, we mean the impairment in the quality of life. With that clarification, the direction for payment of Rs. 30,000/- as compensation under head (v) above can be accepted.

6. The learned Counsel for the Appellant contends that the amount awarded

under the head of pain and suffering is painfully low. Multiple fractures were suffered. For 42 days, the Appellant remained as an inpatient. Thereafter also treatment was taken. Amputation of one leg has resulted. Taking all relevant circumstances into account, we agree that an amount of Rs. 20,000/- is liable to be awarded under the head of pain and suffering.

7. We are satisfied that the amounts awarded under the other heads do not warrant interference.

8. The above discussions lead us to the conclusion that the Appellant is entitled to the following further amounts as compensation in addition to the amounts already awarded by the Tribunal.

i) Loss of earnings: Rs. 10,500.00 [(2,500 X 6 = 15,000 minus 4,500)

ii) Pain and suffering: Rs. 10,000.00 (20,000 minus 10,000)

iii) Reduction in earning capacity: Rs. 36,000.00 (2500 X 12 X 30/100 X 7 = 63,000 minus 27,000) -

Total: Rs. 56,500.00

9. In the result:

a) This appeal is allowed in part;

b) The Appellant is found entitled to a further amount of Rs. 56,500/- (Rupees Fifty six thousand and five hundred only) in addition to the amounts already awarded by the Tribunal;

c) We direct that interest be paid on the entire amount of compensation as directed by the Tribunal in the impugned award;

d) All other directions of the Tribunal are upheld.