
(2015) 03 KL CK 0208
In the High Court Of Kerala
Case No : MACA No. 97 of 2013

Kaniyamkudy Ayisha

APPELLANT

Vs

Shamsudheen and Others

RESPONDENT

Date of Decision : 10-03-2015

Acts Referred:

Citation : (2015) 03 KL CK 0208

Hon'ble Judges : T.R. Ramachandran Nair, J;P.V. Asha, J

Bench : Division Bench

Advocate : P.K. Jose and Tessy Jose, for the Appellant; K.A. Salil Narayanan, Advocates for the Respondent

Final Decision : Allowed

Judgement

T.R. Ramachandran Nair, J.

1. The appellant who lost vision in both her eyes in an accident is aggrieved by the inadequacy of compensation. She claims enhancement of compensation under various heads in view of the pathetic situation in which she has reached. As against the claim of Rs. 14,67,000/-, the Tribunal has granted an amount of Rs. 11,56,100/- with interest at the rate of 7.5% from the date of petition.

2. The accident occurred on 19.1.2007 at about 10.30 p.m. She was travelling in a jeep bearing Reg. No. KL10E 550 from Kozhikode to Wayanad. When it reached at Malapuram near Engapuzha the offending vehicle, a lorry having Reg. No. KL 11-J-6579 which came in the opposite direction and was being driven in a negligent manner and uncontrollable speed hit the jeep. The appellant sustained injuries and three persons including the son-in-law and grand child of the appellant had succumbed to death. She was taken to the Medical College Hospital, Kozhikode and she continued her treatment at MIMS Hospital, Kozhikode, after discharge from Medical College.

3. We heard learned counsel for the appellant and learned counsel for the insurance company. Paragraph 9 of the award gives the details of injuries which

are 14 in number. We extract the same hereinbelow:

- "1. One episode of vomiting
2. Bleeding from both noses
3. Black eye bilateral
4. A lacerated wound about 4 x 2cm size over the root of the nose
5. A sutured wound about 1 x 5cm over the anterior aspect of the scalp
6. A sutured wound over the posterior over the scalp about 10cm in size
7. Three sutured lacerated wound over the centre of forehead each about 4cm long
8. Complained of pain over the left lower part of the forearm with deformity C.T. Scan, C.T. Spine as taken
9. Severe orbital injury. Bilateral shaped orbital.
10. Right lens dislocated. Left lens not separately seen
11. Globes displaced laterally and inferiorly.
12. Multiple fracture seen on the medial and lateral walls Spiral C.T. Scan of thorax taken.
13. Bilateral plural effusion.
14. Consolidation of right lower toes."

4. Her initial treatment is for the period from 20.1.2007 to 16.2.2007 and thereafter from 3.3.2007 to 5.3.2007. She was again admitted in the hospital and continued her treatment till 16.4.2008. Thus, the total inpatient treatment is 34 days. Ext. A7 disability certificate issued by the District Hospital, Mananthavady through the Medical Board shows that the percentage of disability is 100% as she has lost her eye sight in full. Ext. C1 is the said medical certificate. It is seen from the records that apart from the loss of vision of both eyes there are extensive scars on chest right side and upper, lateral abdominal walls. Multiple scars were seen on the face. She had persistent back ache also. The Tribunal found that she had also mental depression due to trauma and loss of vision.

5. Even though learned counsel for the appellant argued before the Tribunal that the disability should be reckoned as 111%, the Tribunal found that it cannot be more than 100% for reckoning the compensation for disability. Before the Tribunal she appeared and it is recorded in paragraph 13 of the award that her condition is pathetic. She is totally blind, her both eyes are in a closed condition. She was heard on her physical ailments and according to her, she had sustained severe head injury and several fractures to the bones of the face. The bone on

the left arm was fractured which was corrected by fixing steel rod. She had also sustained injuries and fracture to the right ribs. She had undergone operation and got the ribs corrected. Her back bone was fractured and a belt is seen used by her now. She has complaints of chest pain and head ache also and she requires two assistants for moving. The Tribunal has also observed that she can hardly stand and her condition is pitiable. Accordingly 100% disability has been assessed and we agree with the same.

6. She is a housewife and therefore after taking monthly income notionally at Rs. 3,000/- and by taking the multiplier of 15, the Tribunal assessed an amount of Rs. 5,40,000/- as compensation towards permanent disability. Learned counsel for the appellant submitted that the multiplier adopted is justified whereas the learned counsel for the insurance company points out that she being in the age group of 40-45, the multiplier will be 14. Her date of birth is 5.1.1967 and the accident occurred on 20.1.2007 and therefore the difference will be negligible. The total compensation assessed, going by the table given in paragraph 24 of the award will show the following:

7. As rightly pointed out by the learned counsel for the insurance company, since 100% disability has been calculated, the amount granted towards loss of earning power may not be correct. We agree with the same. Herein, we notice that in the light of the injuries suffered on her face there are several scars on her face itself and therefore the amount granted towards loss of earning power will stand substituted into one for disfigurement.

8. Great stress is made by the learned counsel for the appellant for awarding more amount towards compensation for engagement of a nurse for future life. It is submitted that the narration made by the Tribunal in the award itself will justify her claim. We also are of the view that the compensation already granted, viz. Rs. 1 lakh under this head requires appropriate modification. In this context, we are of the considered view that since she cannot move about freely without the help of anybody even for doing her personal needs, a constant arrangement may have to be made for enabling her to pursue her normal avocations. The arrangement evidently will be as a bystander and helper. Therefore, a reasonable amount will have to be granted towards compensation for engagement of a nurse which we fix at Rs. 3 lakhs. As far as loss of amenities and enjoyment in life is concerned, the Tribunal awarded only Rs. 25,000/-. Really, she cannot move about freely, cannot travel freely, cannot indulge in any activities and even it will be difficult for her to perform the household duties in a satisfactory manner. The fact that she has lost vision of both eyes will deprive her from enjoying all the pleasures of life like reading, viewing people, T.V., etc. etc.. We therefore grant a sum of Rs. 2 lakhs towards compensation for loss of amenities and enjoyment in life. As far as compensation for pain and suffering is concerned, an amount of Rs. 50,000/- has been granted. She had inpatient treatment for a period of 34 days and in the light of the details of injuries suffered and the treatment undertaken, we fix an amount of Rs. 1 lakh towards compensation for pain and suffering. The

expenses for the bystander has been awarded only at Rs. 3,400/-, reckoning Rs. 100/- per day which we enhance to Rs. 8,500/-, at the rate of Rs. 250/- per day. Even though learned counsel for the appellant submitted that the entire amount claimed towards extra nourishment, viz. Rs. 50,000/- ought to have been granted by the Tribunal, we are of the view that a reasonable amount has been granted.

Therefore, we recompute the amount of compensation in the following manner:

Appeal is thus allowed.

9. We heard learned counsel on both sides on the rate of interest to be awarded. Learned counsel for the insurance company submitted that since the amount being granted towards engagement of nurse is for future life, going by the well settled principles, the claimant is not entitled for interest for the same. We find much force in it, even though learned counsel for the appellant sought otherwise. Therefore, we grant interest at 9% per annum for the enhanced amount of compensation, less the amount of Rs. 3 lakhs fixed as compensation for engagement of nurse in future life.

The parties will suffer their costs in the appeal.