
(2012) 11 KL CK 0109
In the High Court Of Kerala
Case No : MACA. No. 2113 of 2012

Kovvakkaran Govindan

APPELLANT

Vs

National Insurance Co. Ltd., Perumba, Payyannur, Pin -
670001

RESPONDENT

Date of Decision : 09-11-2012

Acts Referred:

Citation : (2012) 11 KL CK 0109

Hon'ble Judges : M.L. Joseph Francis, J; K.T. Sankaran, J

Bench : Division Bench

Advocate : M.V. Amaresan, for the Appellant; P.G. Ganappan and Sri M.A. George, for the Respondent

Final Decision : Allowed

Judgement

Joseph Francis J.

1. This appeal is filed by the petitioner in O.P.(M.V.) No. 1505 of 2004 on the file of M.A.C.T., Thalassery. The case of the petitioner in O.P.(M.V.) is briefly as follows. On 18.4.2004 at about 3.00 P.M. while the petitioner was standing near the road junction at Ezhilode, a car bearing reg. No. KL-13/J-1680 driven by the second respondent in a rash and negligent manner hit on the petitioner as a result of which the petitioner sustained serious injuries. First respondent was the owner and third respondent was the insurer of the car. The petitioner claimed Rs. 3,50,000/- as compensation.

2. Respondents 1 and 2 filed written statement contending that the accident was not due to the negligence of the second respondent. Third respondent filed written statement admitting the policy of the car and contended that the accident was not due to the negligence of the second respondent and that the compensation claimed is excessive. Before the Claims Tribunal PW 1 was examined and Exts. A1 to 9 and X1 were marked. The Claims Tribunal on considering the evidence on record found that the accident was due to the rash

and negligent driving of the second respondent and awarded a compensation of Rs. 1,99,800/- to the petitioner together with interest at the rate of 7.5% per annum from 1.11.2004 till the date of realisation from respondents and the third respondent was directed to deposit the amount as the insurer. Being dissatisfied with the quantum of compensation awarded the petitioner filed this appeal.

3. Heard learned counsel for the appellant and learned counsel for the Insurance Company. Learned counsel for the appellant submitted that the compensation awarded is on the lower side and that the appellant is entitled to get enhanced compensation.

Learned counsel for the Insurance Company supported the award.

4. The Claims Tribunal awarded the compensation under various heads as follows:

5. Ext. A2 copy of wound certificate and Ext. A3 series and Ext. A4 discharge cards of Pariyaram Medical College hospital and Unity Health Complex, Mangalore would show that the appellant aged 52 years sustained the following injuries. (i). Segmental comminuted fracture right leg both bone. Type III compound. (ii). Fracture both bone left leg and (iii). Fracture lateral end of clavicle right side. The above documents show that the appellant was admitted to the hospital on 18.4.2004 (Pariyaram Medical College Hospital) and was discharged on 20.4.2004. He was referred to Unity Health Complex Mangalore and was admitted there on that day and was discharged from that hospital on 10.5.2004. Inter locking nailing was done and on request he was referred to Pariyaram Medical College Hospital from Unity Health Complex. In 2008, he was again admitted to Pariyaram Medical College Hospital on 29.10.2008. Tibial inter locking nail removal was done on 31.10.2008. Ext. X1 is the medical report of Pariyaram Medical College Hospital in which 8% disability right lower limb 20% disability of left lower limb 20% disability of left lower limb and 8% disability of right arm are mentioned. The whole body disability is not specifically mentioned. The Claims Tribunal assessed permanent disability of the appellant as 15% which according to us is on the lower side and we fix the permanent disability of the appellant as 20%, considering the nature of the work done by the appellant as a head load worker. The appellant was aged 51 years at the time of accident. Therefore the Claims Tribunal took 11 as the suitable multiplier. The appellant was a head load worker and the Claims Tribunal assessed his monthly income as Rs. 3,500/- which according to us is on the lower side and we fix the monthly income of the appellant as Rs. 5,000/-. Calculating on that basis the appellant is entitled to get Rs. 1,32,000/- ($5000 \times 12 \times 11 \times 20/100$) as compensation for permanent disability instead of Rs. 69,300/- awarded by the Tribunal. Rs. 30,000/- can be awarded towards loss of earning for six months in the place of Rs. 14,000/- awarded by the Tribunal. Rs. 6,000/- can be awarded towards bystander expenses in the place of Rs. 3,000/- awarded. Thus in total the appellant is entitled to get Rs. 81,700/- as additional compensation.

Accordingly this appeal is allowed in part and the appellant/ petitioner is allowed

to realise Rs. 81,700/- as additional compensation together with interest at the rate of 7.5% per annum from 1.11.2004 till the date of realisation from the respondents and the third respondent is directed to deposit the amount within three months from this date. There is no order as to costs.