
(2010) 01 KL CK 0057
In the High Court Of Kerala
Case No : M.A.C.A. No. 1623 of 2006

Kuttan

APPELLANT

Vs

Surendran, Devassy and Manager, New India Assurance Co.
Ltd.

RESPONDENT

Date of Decision : 20-01-2010

Acts Referred:

Citation : (2010) 01 KL CK 0057

Hon'ble Judges : R. Basant, J;M.C. Hari Rani, J

Bench : Division Bench

Advocate : P.V. Baby, for the Appellant; Renil Anto Kandamkulathy, for the Respondent

Final Decision : Allowed

Judgement

R. Basant, J.—Claimant is the appellant. He claimed compensation for injury suffered by him in a motor accident which took place on 22/7/2000. He had suffered comminuted Bycondylar fracture of right tibia. He was an in-patient for a period of 47 days. The accident allegedly resulted in permanent physical disability. PW2 doctor who examined him had issued Ext.A14 disability certificate assessing the extent of physical disability to be 18%. The claimant belongs to the age group 45-50 years, he having been born on 05/07/1951 and the accident having taken place on 22/7/2000. The claimant is a welder by profession. He produced Ext.A13 certificate from his erstwhile employer to claim that he was getting an income of Rs. 5,000/- p.m. That certificate, it may be relevant straight away to note, was issued by the alleged employer claiming that the claimant was employed by him and had already left the employment of the employer voluntarily. The tribunal, on an anxious consideration of all the materials available before it proceeded to pass the award directing payment of an amount of Rs. 1,23,319/- as per the details given below:

Rs. Pain and suffering 10,000/-

Transport to hospital 2,300/-

Medical expenses 51,199/- (against bills produced)

Extra nourishment and bystander's expenses 4,700/- (Rs. 100/- x 47)

Loss of earnings (Rs. 3,000/- x 3) 9,000/-

Loss of amenities 4,000/-

Disability (Rs. 3,000/- x 12 x 13 x 9/100) 42,120/- ----- Total
1,23,319/- =====

2. The tribunal directed payment of interest @ 6% p.a from the date of the petition to the date of payment.

3. The appellant claims to be aggrieved by the quantum of compensation awarded. Called upon to specify the nature of challenge which the appellant wants to raise, the learned Counsel for the appellant assails the impugned award on various grounds.

4. First of all, it is contended that interest has been awarded at a painfully low rate of 6% p.a. Relying on the decision in Dharampal v. U.P State Road Transport Corporation 2008 (2) KLT 691 (SC) the learned Counsel contends and we accept that interest must have been granted atleast @ 7.5% p.a.

5. The next challenge is against the amount awarded under the head of pain and suffering. Comminuted Bycondylar fracture of right tibia was suffered. He was an in-patient for a period of 47 days. Surgical procedures had to be undergone during this period. The learned Counsel argues and we agree that an amount of Rs. 10,000/- awarded is on the lower side. We are of the opinion that award of an amount of Rs. 15,000/- would have been just and fair.

6. The learned Counsel then argues that though the appellant was an in-patient for a period of 47 days, under the composite head of extra nourishment and bystander's expenses, only an amount of Rs. 4,700/- that is Rs. 100/- per day alone has been granted. The learned Counsel for the appellant prays and we agree that a higher amount is liable to be paid. We hold that compensation under this head can be awarded @ Rs. 150/- per day.

7. The learned Counsel then argues that the quantum of monthly income reckoned by the tribunal for ascertaining loss of earnings as also reduction in earning capacity is too meagre. Rs. 3,000/- p.m alone has been accepted by the tribunal. As shown in Ext.A13, the entire amount of Rs. 5,000/- must have been reckoned as the monthly wages, argues the learned Counsel. Ext.A13 has not been proved satisfactorily. Contents of Ext.A13, we must say, does not inspire confidence. It conveniently suggest that the appellant was employed earlier and had already left employment of the employer voluntarily. The presumption of prudence drawn by the tribunal that the appellant, a mechanic must have been earning an income of atleast Rs. 3,000/- appears to be justified and satisfactory.

We are not satisfied that the monthly income taken into reckoning by the tribunal deserves to be enhanced.

8. We now come to the extent of physical disability. Ext.A14 issued by PW2 which was proved by examination of PW2 in court suggests that the extent of physical disability is 18%. The tribunal accepted only 9% as the percentage reduction in earning capacity. The learned Counsel for the appellant argues that this conclusion of the tribunal is not justified at all.

9. The tribunals, according to us, do not commit any error in not blindly swallowing disability certificates issued by medical officers. Whether such medical officers are examined in court on oath or not, the tribunal has the duty and jurisdictional competence to apply its mind to the nature of the disability and arrive at a satisfactory conclusion on the extent of reduction in earning capacity. We have looked into the nature of employment of the appellant as a welder. We have taken note of the nature of the injury suffered. We have also taken note of the nature of the physical disability certified by PW2 in Ext.A14 and in his evidence. Though we are not persuaded to accept that 18% reduction in earning capacity must have resulted, we feel that it will only be fair and just to reckon 12% as the extent of reduction in earning capacity consequent to the physical disability suffered. We are satisfied, in these circumstances, that 12% reduction in earning capacity in supersession of the conclusion of the tribunal fixing the same at 9% can be accepted. The tribunal has correctly taken the multiplier at 13 and the said ascertainment is justified by the decision in *Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another*, .

10. We have already come to the conclusion that extent of reduction in earning capacity is 9%. This reduction in physical ability must certainly have reflections on the quality of life which the claimant, a person aged 49 years, can aspire to lead. The physical disability suffered is likely to have two pronged reflection in the life of the individual. It may reduce the earning capacity. It can also reduce the quality of enjoyment of life. For the reduction in quality of enjoyment of life caused by the physical disability for the 49 year old claimant, only an amount of Rs. 4,000/- has been awarded and we agree with the learned Counsel for the appellant that this assessment is very much on the lower side. We are satisfied that an amount of Rs. 10,000/- can be awarded as the compensation for loss of amenities.

11. On the basis of the above discussions, we come to the conclusion that the appellant is entitled to a further amount of Rs. 27,390/- in addition to the amounts awarded by the tribunal as per the details given below:

1. Pain and suffering = Rs.15,000/- minus Rs. 10,000/- = Rs. 5,000/-
2. Extra nourishment = (Rs. 150/- x 47) = Rs. 7,050/- and expenses for minus Rs. 4,700/- = Rs. 2,350/- bystander
3. Loss of amenities = Rs. 10,000/- minus Rs. 4,000/- = Rs. 6,000/-

4. Reduction in = Rs. 3,000/- x 12 x 13 x 12/100 earning capacity = Rs. 56,160
minus Rs. 42,120/- = Rs. 14,040/-

Total = Rs. 27,390/-

12. In the result,

a) This M.A.C.A is allowed in part.

b) In addition to the amounts awarded by the tribunal, the appellant/claimant is found entitled to a further amount of Rs. 27,390/- (Rupees twenty seven thousand three hundred and ninety only) as per the details shown above.

c) It is further directed that interest shall be payable @ 7.5% p.a on the entire compensation amount from the date of the petition to the date of payment.

d) All other directions of the tribunal are upheld. The tribunal shall issue fresh directions regarding deposit/release.