

(2011) 08 KL CK 0060
In the High Court Of Kerala
Case No : M.A.C.A. No. 3041 of 2008

K.V. Kousu

APPELLANT

Vs

M.K. Damodaran and New India Assurance Company Ltd.

RESPONDENT

Date of Decision : 01-08-2011

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2011) 08 KL CK 0060

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

Bench : Division Bench

Advocate : V. Binoy Ram, for the Appellant; M. Rajagopalan, for the Respondent

Final Decision : Allowed

Judgement

R. Basant, J.—The claimant is the Appellant. The Appellant, a woman allegedly aged 38 years and a self-employed entrepreneur, claimed compensation u/s 166 of the Motor Vehicles Act for personal injuries suffered by her on 23/12/2000. Against a claim of Rs. 3,00,000/-, the Tribunal awarded a total amount of Rs. 26,875/- as per the details given below along with interest at the rate of 7% per annum:

Medical bills

:

Rs.

6,375/-

Hospitalisation and incidental charges

:

Rs. 2,000/-

Pain and suffering

:

Rs. 10,000/-

Loss of amenity

:

Rs. 5,000/-

Loss of income

:

Rs. 3,000/- (1500 X 2)

Transportation

:

Rs. 500/-

Total

:

Rs. 26,875/-

2. The challenge is limited to the quantum of compensation awarded. The learned Counsel for the Appellant submits that the Tribunal did not realistically take note of all the relevant details. The injured was taken to a local hospital i.e., the Co-operative Hospital, Thalassery. From there, on the same day, she was rushed to the Medical College Hospital, Kozhikode. She had multiple injuries including fracture of ribs 8 to 12. She had suffered blunt injury to the abdomen. Laparotomy and splenotomy were done. Blood transfusion was given. She continued as an inpatient at the Medical College Hospital, Calicut till 8/1/2001. She was advised to continue treatment even after discharge.

3. According to the learned Counsel for the Appellant, the Tribunal had not taken into reckoning the relevant details while awarding the amount of compensation. She had lost 3 teeth. That was also not taken into account by the Tribunal. On the side of the Appellant, Exts.A1 to A5 series were marked. The charge sheet from the Medical College Hospital, Kozhikode, was also produced and marked.

4. Called upon to be specific, the learned Counsel for the Appellant submits that in awarding compensation for medical expenses, the Tribunal did not realistically take note of the period of treatment, nature of the treatment, the continuance of the treatment after discharge etc. Bills were produced only for an amount of Rs. 6,375/-. Only that amount was awarded. A Tribunal called upon to discharge the primary mandate of making just and reasonable compensation available to the victims must realistically take note of the difficulties of the claimant to maintain meticulous account supported by the vouchers to prove the actual loss suffered.

Here, the claimant was a person hailing from Tellicherry. She had to undergo inpatient treatment at Calicut Medical College for a long period of time. Taking all the relevant circumstances into account, for medical expenses, a higher amount should have been awarded by the Tribunal, the counsel contends and we agree. We are satisfied that an amount of Rs. 10,000/- can safely be awarded as compensation for medical expenses.

5. For hospitalisation and incidental charges and transportation, an amount of Rs. 2,500/- was awarded. Considering the period of inpatient treatment at Kozhikode for 20 days, we are satisfied that a higher amount of compensation must be awarded under these heads. Under the composite head of incidental charges, bystander's expenses, extra nourishment, transportation etc. even in the absence of better evidence, we are satisfied that an amount of Rs. 5,000/- should have been awarded as compensation.

6. For pain and suffering, only an amount of Rs. 10,000/- has been awarded. Considering the nature of the multiple injuries including fracture suffered and the nature of the treatment and the surgical procedures undergone, we are persuaded to agree that an amount of Rs. 20,000/- can be awarded as compensation under the head of pain and suffering.

7. The Appellant had lost 3 teeth on the upper jaw. She is said to be aged about 38 years. Splenotomy had to be done also. Under the head of loss of amenities only notional amount of Rs. 5,000/- has been awarded. From this Court the Appellant was referred for evaluation of physical disability by a Medical Board. The Medical Board had opined in the certificate dated 22.07.2011 that 15% is the disability suffered. This physical disability is assessed taking note of the splenotomy performed and the recurrent abdominal pain which the Appellant suffers. This disability is not shown to affect the earning capacity of the Appellant. But in any case, we are satisfied that under the head of loss of amenities, the Appellant is entitled for a much higher amount. Only an amount of Rs. 5,000/- has been awarded. We are satisfied that an amount of Rs. 25,000/- can be awarded under the head of loss of amenities considering the fact that Laparotomy and splenotomy were performed.

8. The Appellant claims to be employed as an entrepreneur. According to the Appellant, she was running a small scale industry - a unit manufacturing ready made garments. According to her, her monthly income is Rs. 5,000/-. The Tribunal had reckoned only Rs. 1,500/- as the monthly income. We are satisfied that in the circumstances of the case, the Appellant must have been involuntary unemployed for a period of 4 months and that her monthly income is Rs. 2,500/-.

9. On the basis of the above discussions, we hold that the Appellant is entitled to the following further amount of compensation in addition to the amount awarded by the Tribunal.

i)

Loss of income

:

Rs. 7,000/- (2,500 X 4 minus 3,000)

ii)

Medical expenses

:

Rs. 3,625/- (10000 minus 6375)

iii)

Pain and suffering

:

Rs. 10,000/- (20000 minus 10000)

iv)

Loss of amenities

:

Rs. 20,000/- (ie. 25000 minus 5000)

v)

Miscellaneous expenses(bystander's expenses, transportation, extranourishment etc.

:

Rs. 2,500/- (5000 minus 2500)

Total

:

Rs. 43,125/-

10. The Tribunal has awarded interest only @ 7% per annum. The learned Counsel for the Appellant contends that this is too low. Consistent with the directions issued by this "Court in other cases, we are satisfied that 7.5% can be reckoned as the minimum rate at which the Appellant is entitled for interest.

11. In the result:

a) This appeal is allowed in part;

b) The Appellant is found entitled to a further amount of Rs. 43,125/- (Rupees Forty three thousand one hundred and twenty five only) in addition to the amount already awarded by the Tribunal as compensation;

c) We direct that interest be paid on the entire amount of compensation @ 7.5% per annum from 02.03.2001- the date of the petition, to the date of payment/realisation;

d) All other directions of the Tribunal are upheld.