

(2012) 06 KL CK 0122
In the High Court Of Kerala
Case No : M. A. C. A No. 266 of 2012

Lineesh N.K.

APPELLANT

Vs

K.P. Nazer and The New India Assurance Co. Ltd.

RESPONDENT

Date of Decision : 01-06-2012

Acts Referred:

Citation : (2012) 06 KL CK 0122

Hon'ble Judges : Pius C. Kuriakose, J;A.V. Ramakrishna Pillai, J

Bench : Division Bench

Advocate : V.S. Chandrasekharan and Smt. Lekshmi Swaminathan, for the Appellant; P.M.M. Najeeb Khan, for the Respondent

Final Decision : Allowed

Judgement

Pius C. Kuriakose, J.—A salesman who suffered Schatzker Type VI tibial condyle (L) common peroneal Nerve injury in a road traffic accident caused by the driver of a vehicle owned by the 1st respondent and insured with the second respondent complains that the Motor Accidents Claims Tribunal did not award him adequate compensation. He claimed a total amount of Rs. 1,50,000/- as compensation and he was awarded a total amount of Rs. 1,13,246/- under various heads. According to him, the learned Tribunal did not award him adequate compensation under various heads including the head of disability, loss of amenities, bystander's expenses etc. We have heard the submissions of the learned counsel for the appellant and Sri. P.M.M. Najeeb Khan the learned Standing Counsel for the second respondent Insurance Company.

2. The learned counsel for the appellant would argue that the compensation awarded by the learned Tribunal to the appellant is inadequate while the argument of Sri. Najeeb Khan was that there is no inadequacy in the compensation awarded.

3. Having considered the rival submissions addressed at the Bar and having carefully gone through the impugned award, we are of the view that there is

some inadequacy in the compensation awarded to the appellant by the learned Tribunal. We find that towards loss of amenities a sum of Rs. 76,500/- was awarded by the learned Tribunal. We are sure that the above sum of Rs. 76,500/- is awarded by the learned Tribunal actually towards disability and not towards loss of amenities. We take it that the learned Tribunal has not awarded any compensation to the appellant towards loss of amenities and we award to the appellant Rs. 10,000/- as compensation for loss of amenities.

4. Towards pain and suffering the learned Tribunal awarded a sum of Rs. 12,000/- to the appellant. We are of the view that the learned Tribunal could have awarded Rs. 3,000/- more towards that head. We award to the appellant Rs. 3,000/- more.

5. As already stated Rs. 76,500/- is awarded towards disability. The learned Tribunal adopted a monthly income of Rs. 2,500/- notionally which was reasonable. The percentage of disability assessed by the Doctors was 15 and that percentage has been adopted. The only mistake committed by the learned Tribunal is while adopting the multiplier. As against the multiplier of 17, the correct multiplier to be adopted was 18. We adopt the correct multiplier and redetermine the disability compensation. We award to the appellant Rs. 4,500/- more towards disability.

6. Towards bystander's expenses the appellant who was treated in hospital as inpatient for 22 days is awarded only Rs. 2,200/- at the rate of Rs. 100/- per day. We award to the appellant Rs. 2,200/- more (at the rate of Rs. 200/- per day).

7. The appellant has been awarded a total amount of Rs. 5,000/- being two months earnings towards loss of earnings. We are of the view that the appellant could have been awarded four months earnings as loss of earnings. The appellant is awarded Rs. 5,000/- more towards loss of earnings.

8. Thus in all the appellant is awarded a total amount of Rs. 24,700/- over and above what has been awarded by the learned Tribunal. This amount will carry interest at the rate specified in the impugned award passed by the learned Tribunal. The appeal is allowed. No costs.