
(2012) 03 KL CK 0237
In the High Court Of Kerala
Case No : M.A.C.A.No. 2199 of 2008

Martin Antony

APPELLANT

Vs

M.K. Najeeb and The Manager, United India Insurance Co.
Ltd.

RESPONDENT

Date of Decision : 30-03-2012

Acts Referred:

Citation : (2012) 03 KL CK 0237

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

Bench : Division Bench

Advocate : P.V. Baby and Sri. A.N. Santhosh, for the Appellant; Rajesh Thomas, for the Respondent

Final Decision : Allowed

Judgement

Pius C. Kuriakose, J.—A technician in a private firm who sustained abrasion over chin and dorsum of left foot, swelling and tenderness over left elbow, lacerated wound over the TA tendon on the left side, small wound over the dorsum of left foot, fracture radial head (L) and comminuted fracture olecranon complains that the learned Tribunal did not award him adequate compensation for the injuries he had suffered. As against his claim of Rs. 3 lakhs, the learned Tribunal awarded him only Rs. 36,000/- . The ground raised by the appellant is that the compensation awarded by the Tribunal under various heads is grossly inadequate. The prominent ground raised is that the Tribunal erred in not awarding to the appellant any disability compensation notwithstanding Ext.A8 Disability Certificate which shows that the Medical Board has assessed the permanent-partial disability suffered by the appellant on account of the injuries is 10%.

2. We have heard the submissions of Sri. A.N. Santhosh, the Learned Counsel for the appellant and also those of Sri. Rajesh Thomas the learned Standing Counsel for the Insurance Company.

3. Sri.Santhosh drew our attention to Ext. A8 Disability Certificate and also to the observation of the learned Tribunal regarding the disability. He submitted that the learned Tribunal's observation that Disability Compensation can be awarded only if there is concrete evidence to show that the earning power of the appellant has been reduced, is incorrect. Counsel also submitted that the compensation awarded by the learned Tribunal towards other heads also is insufficient.

4. Sri.Rajesh would support the impugned award. According to him, there is no warrant for any interference as the learned Tribunal has awarded reasonable compensation to the appellant.

5. We have given our anxious consideration to the rival submissions addressed at the Bar. We have carefully gone through the impugned award. We are unable to approve the action of the learned Tribunal in not having awarded any compensation towards disability notwithstanding Ext. A8 disability certificate issued by a competent Medical Board. The Tribunal took the view that in the absence of concrete evidence regarding loss of earning power no disability compensation can be awarded. We are sure that in view of the disability which is certified by a competent Medical Board, the efficiency of the appellant to discharge his duties has been reduced and the quality of his life has been affected. We are of the view that adopting a notional income disability compensation has to be calculated taking the percentage of disability suffered by the appellant to be 10%. When it is so done, it will be seen that the appellant is eligible for an award of a sum of Rs. 61,200/- towards disability compensation and we award to the appellant the above amount.

6. Coming to the other counts of compensation we found that there is some inadequacy in the compensation awarded towards pain and sufferings. We award to the appellant Rs. 3,000/- more towards pain and sufferings. So also we notice inadequacy in the compensation for loss of amenities awarded to the appellant. We award to the appellant Rs. 5,000/- more under that count. Loss of earnings has been awarded to the appellant only for two months and that too at the rate of Rs. 2,000/- per mensem. We adopt the monthly income of the appellant to be Rs. 3,000/- as the accident has occurred in the year 2000. We also are of the view that three months' amount should be granted towards loss of earnings. When loss of earnings is so calculated, the appellant would become eligible for an award of a sum of Rs. 5,000/- more and we award that amount to the appellant. Towards bystander's charges also we are convinced that the appellant has not been awarded adequate compensation. We award to the appellant Rs. 3,000/- more towards bystander's expenses.

7. Thus in total the appellant becomes entitled for an amount of Rs. 77,200/- over and above what is awarded by the learned Tribunal. This amount will carry interest at the same rate as awarded by the Tribunal in its award. The appeal is allowed. No costs.