
(1997) 03 KL CK 0014
In the High Court Of Kerala

M.N. Sheeja

APPELLANT

Vs

Aboobacker and Others

RESPONDENT

Date of Decision : 06-03-1997

Acts Referred:

Motor Vehicles Act, 1939 — Section 95(2)(b)(1)

Citation : (1997) 2 ACC 647

Hon'ble Judges : V.V. Kamat, J;K.A. Mohamed Shafi, J

Bench : Division Bench

Judgement

V.V. Kamat, J.—These are appeals by the Insurance Company and the claimant respectively.

2. The proceedings of the award dated November 30, 1988 in O.P.(M.V.) 11/1987 of the Motor Accidents Claims Tribunal, Wayanad - Kalpetta was brought before us.

3. The insurance company relying on the statutory provisions of Section 95(2)(b) (1) of the Motor Vehicles Act, 1939 governing the compensation as on November 30,1986 when the accident took place, urged that the upper limit is Rs. 1,50,000/- and consequential grievance against the award for the total sum of Rs. 2,62,000/- as liability of the appellant-Insurance Company in the first instance.

4. The incident is of November 30,1986 occurred at 3.30 p.m., when the injured Miss M.N. Sheeja, walking on the eastern side of Kalpetta - Battery road at Kainatty side was knocked down by a lorry -- KLC 5633, driven by Aboobacker (original respondent No. 1), owned by K. Vijayan (original respondent No. 2) and insured with the appellant (respondent No. 3). The result of the accident was that Sheeja's left leg was crashed and ultimately had to be imputed at the Medical College Hospital, Calicut. The lead incident to the presentation of claim petition on January 29, 1987 before the Tribunal claiming a total compensation of Rs. 3,00,000/-.

5. The Tribunal by the impugned award granted compensation of Rs. 2,62,000 /- with interest at 12% p.a. from January 29,1987 till the date of payment with proportionate cost.

6. With regard to the contention of the appellant-Insurance Company, the Tribunal had dealt with it in paragraph 9 of the award. What is observed by the Tribunal in the context is more than curious and it is as follows:

In this case i.e, in Ext. R1 the said column is kept blank. Moreover, now where it is recorded in Ext. R1 that the limit is Rs. 1,50,000/-. Ext. R1 only shows that the insurance premium is Rs. 200/-. None has come to the box to prove Ext. R1 and to say that as per this the limit is Rs. 1,50,000/-. Therefore, I find mat Ext. R1 is not properly proved. Therefore no reliance can be made on Ext. R1. Therefore, I find mat the 3rd respondent Insurance Company failed to prove that their limit is Rs. 1,50,000/-.

It is basing that the limit of the liability is set down by Section 95(2)(b)(1) of Motor Vehicles Act, 1939 governing the day on which the accident took place and there is no difficulty that this limit is Rs. 1,50,000/-. The reasoning of the Tribunal, therefore, is only needed to be stated for setting it aside which we hereby do. The appeal of the insurance company is confined to this submission only and rightly so, and it is therefore hereby allowed.

7. While going through the impugned award, and that too for the purpose of considering the merits of M.F.A. 122/89, preferred by the claimant Miss M.N. Sheeja contending for enhancement over and above the amount of Rs. 2,62,000/- granted, urging in support thereof that the requirement for artificial limb and for the amounts to be spend in future are some of the factors needed to consider enhancement, we went through the records of the proceedings.

8. We have seen mat the negligence attributable to respondents flows from the facts speaking themselves and the Tribunal in the context has emphasised mat the claimant-Sheeja was not all cross-examined by the respondents. The Tribunal also emphasised that the fact that the lorry went off from the road and fell into a channel on the road side is also a speaking situation as seen from Ext. A9 series of photographs. No wonder then that the Tribunal had no difficulty in recording the finding of rashness and negligence at the first instance. We do not find any defect in regard thereto.

9. The petitioner - claimant, at the time of the incident, was a girl of 9 years and a student. The incident resulted in crush injury on the left leg and fracture of shaft of left femur, with the result that her leg was amputated. Her evidence is supported by that of her father as P.W.2. The Tribunal had also considered the case short (Ext. XI) and had observed, as a consequence the accident gave her great pain and suffering which continued also during the period of treatment. The Tribunal has recorded that petitioner-claimant is otherwise found to be smart, a good looking girl, would have to suffer throughout her life because of the amputation of her leg. The Tribunal seeks to support the above proposal by

reference of certificate of merit in pencil drawing, group song and light music. This is sought to be re-enforced by reference to the certificates (Ext. A7) issued by the Head-Master certifying that she was very activate in curricular and extra-curricular activities. The Tribunal referring to the mark list of the Terminal Examination of the academic year 1986-87 thought that she secured very high marks, performance is securing 304 out of 400 marks (above 70%) and in the annual examination 292 out of 500 marks (little over 50%); she had also appeared for lower secondary scholarship examination.

10. The material on record lead the Tribunal to observe that this young bright girl is going to meet her future life very adversely because of the amputation of the leg due to the accident.

11. With an effort to avoid the clouding of our judicial vision, we would like to observe that the performance in the examination as is sought to be inferred on the basis of material on record could not be said to be mat of a brilliant girl in these days of photo-finish competition, which starts sometime from about 90%. We have to be conscious that it is the function of the Court to determine just compensation.

12. this Court becomes conscious especially when the appellant-Insurance Company, in view of provisions of Section 96 of the Act, has a limited scope and thereby prevented from challenging the quantum, to consider the situation especially when it finds that the quantum is blown out of all proportion, even by a process of unnecessary duplication in regard thereto by the Tribunal, Therefore, we are reminded of provisions of Order XLI, Rule 33 of Code of Civil Procedure, with reference to our power to pass or make such order as the case may require, notwithstanding the situation that the appeals before us relate to only apart of the aspect of the proceedings, and the real parties (owner and driver) have not appealed or even approached by way of any remedy of their - own. Giving our anxious thought, we feel that this is the occasion that requires us to consider the question of quantum because it requires to be suitably modified so that the function of this Court to award just and adequate compensation be realised.

13. The aspect is taken up for consideration by the Tribunal at paragraph 11 of the award. In the first instance, the claim of 50,000/- is taken up with reference to pain and suffering at the time of the accident and during the period of treatment. The Tribunal without any discussion in regard thereto found it reasonable and has allowed it. Even men without realising that the amount is granted on the ground of pain and suffering not only at the time of accident but throughout her life in future monetising it at Rs. 50,000/-, the Tribunal has also thereafter proceeded to consider the claim with regard to personal disability as well as loss of earning due to personal disability separately, the Tribunal has awarded Rs. 100,000/-eachonthesecounts. The process of reasoning would show that brightness in studies and smartness and goodness in looks all fail the claimant throughout as a permanent disability. In the same process of reasoning, the Tribunal has also considered that she will not be able to go for a successful

life because of the amputation of her leg which would be an impediment for proper marriage alliance. Thus, it would be found that on these three analogous aspects the Tribunal has awarded Rs. 2,50,000/-. Bare reading of the award would show that Tribunal has not realised the over-lapping character of pain and suffering at the time of the accident and thereafter throughout her life, the consequence of permanent disability and loss of earning, all necessarily flowing in an overlapping way. Certainly, the Tribunal is in obvious error of granting Rs. 1,00,000/- more than once almost on the same count. In our judgment, it becomes really necessary to exercise the power of Order XLI, Rule 33 of CPC with regard to this consequence of unnecessary duplication. It would follow that the award would have to be modified by reduction of Rs. 1,00,000/- in the context, for the above reasons.

14. The above discussion would show that the three factors, such as pain and suffering suffered at the time of accident and during the period of treatment resulting in consequential pain and suffering throughout the life of the claimant together with the aspect of permanent disability and loss of earning, would be within there on sweep on the requirement for artificial limb which are required to be changed more often than not once as well as the amounts to be spent in future. In our judgment, it is necessary to bear in mind that what is required to be awarded by the Court u/s 110B of M.V. Act, is just and adequate compensation. It is not in the nature of a gift and definitely the reasoning of the Tribunal and the approach is more than emotional in the context. In all such cases, it is the misfortune of the situation, perhaps which is to be remembered for the rest of the life with sorrowful tears. In this context, the Court in its process of determination of adequate and just compensation has to perform the delicate task of extricating the burst of emotion in the process. It becomes an emotional approach, when it is reasoned out that the girl would be without marriage, that the girl would be without work and that the girl would be without capacity. Every situation of calamity brings alongwith it necessary courage to meet the situation, and younger the age greater is the need and energy that flows into the situation to make up the victim ready for futures eventualities. It is the experience and passage of time that is the healer. In the award of compensation, justness and adequacy are factors which are more prominent. Giving our anxious thought, we find that just and adequate compensation would be Rs. 1,62,000/- with liability of the insurance company - the appellant upto Rs. 1,50,000/- and the rest would be that of the owner and driver.

15. For the above reasons, the impugned award stands modified and respondents Nos. 1 to 3 are ordered to pay compensation of Rs. 1,62,000/- with interest at 12% p.a. on the said sum of Rs. 1,62,000/- from the date of petition (January 29, 1987) till the date of payment with proportionate cost, as ordered by the Tribunal making it clear that the liability of the Insurance Company - (respondent No. 3) would be mat of Rs. 1,50,000/- and interest thereon, leaving the rest of the liability as of respondents 1 and 2 (owner land driver) respectively. It is needless to say that all payments that are made would be

adjusted in the process. The proceedings are decided as above.

Therefore, M.F.A. No. 60/1989 by the kisuranije company is allowed with regard to the limit of Rs. 1,50,000/-. Similarly, I.F.A. No. 122(1989 preferred by the claimant for enhancement stands dismissed. The impugned award stands modified in the light of the observations in the judgment to Rs. 1,62,000/- in exercise of the power under Order XLI, Rule 33 of CPC as specified. Ordered accordingly.