

(2012) 03 KL CK 0072
In the High Court Of Kerala
Case No : MACA. No. 1853 of 2006

Nabeesa

APPELLANT

Vs

Bundi Nageswara Rao, N.T. Laiju and National Insurance Co.
Ltd.

RESPONDENT

Date of Decision : 20-03-2012

Acts Referred:

Citation : (2012) 03 KL CK 0072

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

Bench : Division Bench

Advocate : R. Sudhish and Smt. M. Manju, for the Appellant; Rajan P. Kaliyath, for the Respondent

Final Decision : Allowed

Judgement

Ramakrishna Pillai, J.—The claimant is in appeal. Allegedly the appellant sustained injuries in a road traffic accident on 3/7/1998. According to the appellant while she was walking along the road, she was hit down by a truck insured with the third respondent - Insurance Company. Against the claim of Rs. 3,00,000/-, the learned Tribunal awarded Rs. 96,500/- the adequacy of which is under challenge.

2. We have heard the learned counsel for the appellant and the learned standing counsel appearing for the 3rd respondent - Insurance company. We have also perused the impugned award.

3. The learned counsel for the appellant took us to the relevant page of the award which details out the injuries. A copy of Ext.A7 certificate issued by the Medical Trust Hospital, where the appellant had undergone treatment was made available to us for our perusal during the course of argument. Ext.A7 reveals that in addition to the facial lacerated wounds, the appellant sustained fractures to left zygomatic arch, squamous part of right temporal bone, floor of orbit, nasal bones, ethmoid and maxillary sinuse. Fracture was noted on the left first rib also.

X-ray revealed comminuted fracture to middle finger, ring and little finger. Fractures were reduced and fixtures were made under general anesthesia. Ext.A7 further reveals that the appellant had palsy to the right 3rd cranial nerve which was treated with steroids. As the sensorium was dull and response to stimuli were not brisk, she was put on ventilatory support. She was hospitalised for 16 days, it is revealed.

4. Towards compensation for pain and suffering, the learned Tribunal has awarded a sum of Rs. 20,000/-. Considering the nature and gravity of the injuries sustained by the appellant, we are of the view that some more amount could have been awarded under that head. Hence we are awarding an additional sum of Rs. 5,000/- towards compensation for pain and suffering.

5. Towards loss of amenities in life for the period during which the appellant had undergone treatment and rest, the learned Tribunal has awarded a sum of Rs. 15,000/- which according to the learned counsel for the appellant is too low. We are awarding an additional sum of Rs. 5,000/- on that count.

6. Towards by-stander's expenses, the learned Tribunal has awarded Rs.1,000/-. The accident was of the year 1998. We are of the view that by-stander's expenses at the rate of Rs.150/- per day could have been awarded by the Tribunal. Thus the appellant becomes eligible to get an additional sum of Rs. 1400/- towards by-stander's expenses.

7. The monthly income of the appellant was fixed by the learned Tribunal at Rs. 1250/-. Allegedly she was a house- maid, and was aged 55 years at the time of the accident. The claim of the appellant was that she was earning a monthly income of Rs. 1500/-. As the claim is reasonable, we are of the view that the monthly income of the appellant can be fixed at Rs. 1500/-. Presumably the appellant might have been compelled to take rest at least for a period of six months, she has to be compensated for loss of earning for a period of six months at the rate of Rs.1500/- per month. We notice that the learned Tribunal has awarded only Rs. 3,750/- towards loss of earning. Hence, we are awarding a sum of Rs. 5250/- as additional compensation towards loss of earning.

8. The learned counsel for the appellant would submit that in spite of the disability made mention of in Ext.A8 disability certificate, only a global sum was awarded (Rs. 10,000/- for orthopedic disability and Rs. 10,000/- for visual disability) by the learned Tribunal. The learned counsel for the 3rd respondent, per contra, would submit that Ext.A8 disability certificate was not properly proved. A copy of Ext.A8 certificate was made available for our perusal. We do notice that Ext.A8 was issued by a Medical Board consisting of an Ophthalmologist, an ENT Surgeon and an Ortho Surgeon. As per Ext.A8, the disability was noted as under:

Orthopaedic disability-

10%

ENT-

5% and

Visual-

30%

9. For arriving at the total disability, the visual disability of 30% will have to be converted into whole body disability. When converted into whole body disability, it will stand reduced to 10%, the same being one-third of the disability pertaining to vision. The other counts of disability i.e. orthopedic and ENT made mention of in Ext.A8 certificate are to be added as under:

Visual disability -

10%

Orthopedic disability as per Ext.A8 -

10%

Visual disability and orthopedic disability =

$= 10 + (100 - 10) \times 10 / 100 = 19\%$

Visual disability + orthopedic disability +

ENT disability

$= 19 + (100 - 19) \times 5 / 100 = 23.05$ (Rounded off to 23%)

We have already fixed the monthly income of the appellant at Rs. 1500/-. The proper multiplier applicable to the age group of the appellant is 11. When the compensation for permanent disability is recalculated fixing the monthly income of the appellant at Rs. 1500/- and adopting 23% disability, the appellant will become entitled to get a sum of Rs. 45,540/- as compensation for permanent disability. As the learned Tribunal has awarded only Rs. 20,000/-, the appellant becomes entitled to get an additional sum of Rs. 25540/- as compensation for permanent disability. Thus in total the appellant is entitled to get a sum of Rs. 42,190/- (Rupees forty two thousand one hundred and ninety only) over and above what was awarded by the learned Tribunal. The additional amount will carry interest at the rate of 7% per annum.

The appeal is allowed. The impugned award shall stand modified as above. No order as to costs.