
(2013) 11 KL CK 0034
In the High Court Of Kerala
Case No : M.A.C.A. No. 957 of 2013

National Insurance Co. Ltd.	Vs	APPELLANT
Anoopkumar T.K. and Another		RESPONDENT

Date of Decision : 28-11-2013

Acts Referred:

Citation : (2014) 1 KLJ 396 : (2014) 1 KLT 266

Hon'ble Judges : S. Siri Jagan, J;K. Ramakrishnan, J

Bench : Division Bench

Advocate : E.M. Joseph, for the Appellant; V.S. Chandrasekharan, for the Respondent

Judgement

S. Siri Jagan, J.—The insurance company in O.P. (M.V). No. 1361/2008 before the Motor Accidents Claims Tribunal, Kozhikode, has come up in appeal challenging, the quantum of compensation awarded by the Tribunal in the said O.P. filed by the 1st respondent herein, claiming compensation for the injuries and consequent disability suffered by the 1st respondent in an accident caused by the negligent driving of a vehicle owned and driven by the 2nd respondent, which vehicle was insured with the appellant. The Tribunal, after finding negligence on the part of the 2nd respondent in driving the vehicle, which caused the accident, awarded compensation under various heads as follows:

The appellant challenges the award of compensation under the head, "permanent disability".

2. The contention of the appellant is that the 1st respondent is a Statistical Investigator Grade I under the Government of Kerala. He was aged 32 years at the time of accident on 17.5.2008. The disability certificate certified that he suffered 10% whole body disability. The Tribunal awarded compensation for loss of earning capacity taking the income of the 1st respondent as Rs. 6,840/- per month and adopting 17 as the multiplier. The appellant contends that the Tribunal could not have awarded any compensation under that head. Although

the Tribunal describes the amount awarded as compensation for permanent disability, from the calculation, it is clear that what is awarded is compensation for loss of earning capacity. The contention is that the 1st respondent has no case that as a result of the disability suffered by him on account of the injuries in the accident; he lost his employment or that his salary has been in any way reduced. In fact, he did not adduce any evidence whatsoever even to the effect that his future prospects in his employment has been impaired in any manner because of the disability. In such circumstances, the Tribunal could not have awarded compensation for loss, of earning capacity, which actually the Tribunal did, but under the head, "permanent disability". The appellant, therefore, seeks deduction of the said amount from the total compensation awarded by the Tribunal.

3. This is stoutly opposed by the learned counsel for the 1st respondent-claimant. She submits that the Tribunal has done the correct thing, insofar as the disability certificate certified 10% disability and in the decision of the Supreme Court in *Kavitha v. Deepak*, 2012 (3) KLT SN 141, [Case No. 144] (SC), the Supreme Court has held that in case of permanent disability, compensation can be awarded both for loss of earning capacity as well as for disability. According to the counsel for the 1st respondent, that only has been done by the Tribunal.

4. We have considered the rival contentions in detail.

5. On account of permanent disability caused in an accident, a claimant suffers in two ways. The first is the adverse effect of that disability on his earning power. In other words, if the disability results in reduction in his capacity to earn income to any extent, the claimant has to be compensated for the same. The second is the adverse effect of that disability on his personal life. That is, if on account of the disability, the appellant cannot do his personal chores in his day to day life to any extent, he will have to be compensated for the same also. Apart from compensation under these two heads, for disability, there cannot be any compensation under a third head. But it is often seen that Tribunals use the words, "disability", "loss of earning capacity" and "loss of amenities and enjoyment in life" interchangeably, which should not be done. Loss of earning capacity has to be calculated by multiplying the annual income with the multiplier fixed based on the age of the claimant and the percentage of disability depending on the effect of the disability on his earning power. For this purpose, the disability or the occupational disability certified by the doctor should not be automatically adopted. The Court/Tribunal has to correlate the disability to the avocation of the claimant and adopt a percentage of disability, to the extent it would affect his earning power, to arrive at the compensation for loss of earning power.

6. We have also noticed that some Motor Accidents Claims Tribunals in the State have construed the decision of this Court in *George Vs. E.T. Thomas*, Residing at Ellikkal House P.O. Irinjalakuda, Thrissur District, *Jacob and The United India Insurance Company Limited*, Irinjalakuda Thrissur District, wrongly, by holding

that for disability, compensation has to be awarded only under one head. We reiterate that we have only held that apart from (1) compensation for loss of earning power and (2) compensation for disability/loss of amenities and enjoyment of life, there is no third head, because some Tribunals used to award compensation for (1) disability (2) loss of earning capacity and (3) loss of amenities and enjoyment in life separately under three separate heads, which should not be done. We make it clear that the head/loss of amenities and enjoyment in life" should take in its fold loss of good marriage prospect, disfiguration, loss of expectation of life and the like, which would affect his personal life adversely because of the disability.

7. But the question of compensation for loss of earning capacity has to be considered in a pragmatic manner. Of course, a person like a daily labourer or a person, who does not have steady monthly rated job, would have to be given compensation for loss of earning power considering the disability, since that disability would certainly prevent him to some extent in his pursuit to earn income. But where a person is employed in a salaried job and notwithstanding the disability suffered by him on account of the injuries in the accident, he does not suffer any reduction in salary or loss of future prospects in his employment, then he will not be entitled to any compensation for loss of earning capacity. But even in such cases," the claimant would be entitled to compensation for loss of amenities in life, which occasionally is termed by Courts and Tribunals as disability as well, considering the effect of the disability on his personal life and his ability to do the personal chores in his private life. In fact this question has been considered by the Supreme Court elaborately in the decision of Raj Kumar Vs. Ajay Kumar and Another, In that decision, in respect of the computation of compensation for loss of earning capacity, the Supreme Court has held thus in paragraph 10:

10. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent ability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood. For example, if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed around 60%. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred percent, if he is neither able to drive or do carpentry. On the other hand, if the claimant was a clerk in

government service, the loss of his left hand may not result in loss of employment and he may still be continued as a clerk as he could perform his clerical functions; and in that event the loss of earning capacity will not be 100% as in the case of a driver or carpenter, nor 60% which is the actual physical disability, but far less. In fact, there may not be any need to award any compensation under the head of loss of future earnings", if the claimant continues in government service, though he may be awarded compensation under the head of loss of amenities as a consequence of losing his hand. Sometimes the injured claimant may be continued in service, but may not found suitable for discharging the duties attached to the post or job which he was earlier holding, on account of his disability, and may therefore be shifted to some other suitable but lesser post with lesser emoluments, in which case there should be a limited award under the head of loss of future earning capacity, taking note of the reduced earning capacity. It may be noted that when compensation is awarded by treating the loss of future earning capacity as 100% (or even anything more than 50%), the need to award compensation separately under the head of loss of amenities or loss of expectation of life may disappear and as a result, only a token or nominal amount may have to be awarded under the head of loss of amenities or loss of expectation of life, as otherwise there may be a duplication in the award of compensation. Be that as it may.

Our view is supported by the said decision of the Supreme Court. In fact, the decision quoted by the learned counsel for the 1st respondent viz., George's case (*supra*) does not lay down any different law.

8. In view of the above finding, what we have to consider in this case is as to whether the 10% disability accepted by the Tribunal will in any way affect the future earning power of the 1st respondent. As already stated, the 1st respondent is working as a Statistical Investigator Grade I in the Taluk Statistical Office of the Government of Kerala. The 1st respondent has no case that on account of the disability, he has lost his employment or that he cannot perform the duties of his office as he was doing before, which has affected his remuneration adversely or that his salary was reduced because of the disability. He also has not chosen to adduce any evidence to prove that on account of the disability, his future prospects in employment, such as promotion etc. would in any way be affected. The 1st respondent was only 32 years old at the time of accident. The multiplier fixed for a person aged 32 years is 16 as per the decision of the Supreme Court in *Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another*, Therefore, even for the period of that multiplier, the 1st respondent would continue to earn his salary in his post in the Government of Kerala unaffected by the disability. As such, till his retirement, he will not lose any future earnings. Perhaps if the 1st respondent was aged about 45 years or so, we could have considered the question of awarding compensation for loss of earning capacity for the period after his retirement on a reduced income for the balance of the multiplier for the remaining years after his retirement. For example, if the 1st respondent was aged 51 years, the multiplier applicable

would be 11. If his retirement age is 56 years, out of the period of the multiplier of 11, for 5 years, he would not lose any future income. But for the balance 6 years after retirement he could have earned some income by engaging in some other avocation which may be adversely affected by the disability. Therefore, on a reduced notional income, he may be entitled to compensation for loss of earning capacity. But if it is found that even with the disability, he could have engaged in the same kind of job, he was doing prior to his retirement, then also, he would not be entitled to any compensation even after retirement even for the reduced multiplier. That also is not possible in this case, because for the period of multiplier fixed by the Supreme Court in Sarla Verma's case (supra), the 1st respondent would continue to earn the same income, which he would have earned even if he had not suffered the disability, even with the disability. In such circumstances, the Tribunal is not correct in awarding compensation for loss of earning capacity describing it as permanent disability. Therefore, that amount has to be deducted from the total compensation.

9. But we note that the Tribunal has not awarded any compensation to the 1st respondent for loss of amenities and enjoyment in life, which is occasionally described by some Tribunals as disability also. We are of opinion that adequate compensation has to be awarded to the 1st respondent for loss of amenities and enjoyment in life commensurate with the 10% disability suffered by him taking into account the effect of that disability on his personal life. In the facts and circumstances of the case, we fix that compensation as Rs. 50,000/-. Consequently, from the total compensation awarded by the Tribunal, Rs. 89,536/- has to be deducted. Resultantly, the total compensation due to the 1st respondent would be only Rs. 1,60,979/- instead of Rs. 2,50,515/- awarded by the Tribunal. Accordingly, we re-fix the compensation due to the 1st respondent as Rs. 1,60,979/- instead of Rs. 2,50,515/- awarded by the Tribunal.

With the above modification of the impugned award of the Tribunal, the appeal is disposed of.