(2015) 02 KL CK 0110

In the High Court Of Kerala

Case No : M.A.C.A. Nos. 3114/2009, 471, 1447 and 1599/2010

National Insurance Co. Ltd. APPELLANT

Vs

Reji P. Raju RESPONDENT

Date of Decision : 13-02-2015

Acts Referred:

Citation : (2015) 02 KL CK 0110

Hon'ble Judges : P.V. Asha, J.;T.R. Ramachandran Nair, J.

Bench : Division Bench

Advocate : Rajan P. Kaliyath, for the Appellant; P.V. Baby and A.N. Santhosh, Advocates for the Respondent

Final Decision : Allowed

Judgement

P.V. Asha, J.—Assailing the common award in O.P. (M.V.) Nos. 1362 of 2003 and 1815 of 2003 of the Motor Accident Claims Tribunal, Pathanamthitta, the claimants have filed M.A.C.A. Nos. 1599 of 2010 and 1447/2010 and the Insurance Company has filed M.A.C.A. Nos. 3114/2009 and 471/2010 respectively. The claimants have come in appeal for enhancement of compensation, while the Insurance Company assails the awards as excessive and unjustified.

2. We heard Sri. A.N. Santhosh for the claimants and the Sri. Rajan P. Kaliyath for the Insurance Company. One of the contentions raised by the learned counsel for the Insurance Company is that the accident occurred on account of the contributory negligence on the part of rider of the motor bike. The accident leading to the claim petitions arose on 21.09.2003, when the motorcycle, which the claimant in O.P. (MV) No. 1815/2003 was riding with the claimant in O.P. (MV) No. 1362/2003 as pillion rider, collided with a Jeep which came in the opposite direction. Both of them where knocked down and they sustained very serious injuries. They were taken to the hospital.

3. First of all we will deal with the contentions raised by the learned counsel for

the Insurance Company regarding the contributory negligence. The claimants were travelling in their motorbike through Vadasserikkara-Mannarakulanji Public Road. When they reached near Kannanpalam, a jeep with registration No. KL3F-7176, which was coming from east to west hit against their motorcycle and knocked them down. The Tribunal considered the issue regarding negligence and found that it was the driver of the offending jeep who was negligent. The contention of the Insurance Company regarding contributory negligence was repelled by the Tribunal on the ground that the Insurance Company did not adduce any evidence in order to substantiate the same. The statement in their appeal is that the rider of motorcycle came near the middle of the road and the Tribunal was incorrect in not finding any contributory negligence on the part of the rider of the motorcycle.

4. The learned counsel appearing for the claimants pointed out that they were on the correct side and the road was having a width of 6 metres and the motor bike was found at 2.2 metres south from the north end of the tarred road. No material is found to have been produced by the Insurance Company in support of their contention that there was negligence on the claimants. As per the FIR, as well as final report, the driver of the jeep alone is found negligent and responsible for the accident. Tribunal arrived at the finding of negligence on the driver of jeep on the basis of Exts A1 to A7 documents. Therefore we do not find any ground to reverse the same, It is pertinent to note that the Apex Court in Jiju Kuruvila and Others Vs. Kunjujamma Mohan and Others, and in Meera Devi and Another Vs. H.R.T.C. and Others, , has held that, in the absence of cogent evidence, no finding can be arrived at regarding contributory negligence, even on the basis of scene mahazar or in case of head on collision. Therefore, in the absence of any evidence on record, we find that the contentions raised by the learned counsel for the Insurance Company regarding contributory negligence on the rider of the motorcycle, are unfounded.

5. The next issue to be considered is whether the quantum of compensation awarded by the Tribunal is excessive or inadequate. According to the learned counsel for the claimants the quantum of compensation awarded under various heads are thoroughly inadequate; income reckoned is too low. On the other hand the learned counsel for the Insurance Company while vehemently opposing the claim for enhancement, submits that exorbitant amounts are awarded. Pointing out the claims made in the claim petition, it is argued that compensation cannot exceed the claim under each head. In O.P. (MV) No. 1362 of 2013, the claimant was a heavy duty driver with badge. On account of the accident he had suffered very serious injuries. He underwent treatment in Pushpagiri Hospital, Thiruvalla and Century Hospital, Mulakkuzha. As per the discharge summary Ext A8, he was treated as an inpatient from 21.09.2003 to 11.10.2003. On account of the accident, his leg had to be amputated. As per Ext. A8 the injuries sustained by him are the following:

"(1) Grade III open fracture both bones left

(2) Grade II open fracture shaft femur left"

6. The evidence before the Tribunal consisted testimony of PW1, the appellant, and documentary evidence by way of Exts. A1 to A15. The medical expenses itself is seen as Rs. 1,13085.71/- Ext. A11 disability certificate issued by the District Medical Board, certified that, he incurred 50% permanent disability. It is also noticed therein that he had to suffer amputation below knee level of the left leg, fracture femur left, crush injury left leg. The Tribunal, in the light of the judgment of this Court in Jayaprasad Vs. Rejimon Philip, , reckoned the disability as 100%, since the appellant, will never be able to undertake the avocation of driver.

7. At the time of the accident the appellant was a 29 year old bachelor. It is stated that the appellant was working as a driver in Gulf and thereafter he got employment as a lorry driver in a private firm. With the support of Ext. A13 certificate issued by the Proprietor of St. George Lorry Service, Chittar, he claimed that he was getting wages @250/- per day. It was claimed in the petition that he was getting Rs. 7,000/- per mensem.. The Tribunal reckoned his monthly income @ Rs. 3,000/-. Adopting the multiplier as 18, the Tribunal reckoned his compensation for permanent disability as Rs. 6,48,000/-. We are of the view that the income reckoned by the Tribunal is too low. In the light of the judgment of the Supreme Court in Minu Rout and Another Vs. Satya Pradyumna Mohapatra and Others, , this Court has to take judicial notice of the income of a driver at the relevant time. In that case, the Apex Court reckoned the income of a driver in respect of an accident which occurred in the year 2004 as Rs. 6,000/-. Since the accident in this case occurred in the year 2003, we reckon the income @ Rs. 5,000/- per mensem. We see that the proper multiplier in the case of the appellant herein is 17, instead of 18 adopted by the Tribunal. Therefore the compensation under the head ''permanent disability'' will be Rs. 5,000 X 12 X 17 X 100/100 = 10,20,000/-. The Tribunal has awarded a sum of Rs. 35,000/- towards pain and suffering. Appellant had to suffer amputation of leg. He underwent 3 major surgeries before amputation was done. The in-patient treatment in Century Hospital alone was for 21 days. On account of the amputation, etc, he had to suffer a lot and he continues to suffer. The mental agony, pain and sufferings, discomforts, inconveniences, etc of a young man at the age of 29, can be visualized. Therefore we enhance the compensation under this head to Rs. 50,000/-. The Tribunal has awarded a sum of Rs. 15000/- alone towards loss of amenities. Having regard to the lifelong discomfort and inconveniences caused to the appellant on account of amputation of his leg, especially to a driver, we award a sum of Rs. 70,000/- towards loss of amenities, loss of enjoyment and shortened expectation of life. On account of the amputation of leg, the appellant is liable to be compensated under the head of disfiguration as well as diminution of marriage prospects and under this head we award Rs. 30,000/-. It is seen that a sum of Rs. 3,000/- alone is granted under the head of bystander''s expenses and extra nourishment together. It is seen that the appellant was under inpatient treatment alone for a period of 21 days.

We enhance the bystander expenses to Rs. 3,150/- @ Rs. 150/- per day for 21 days and also we award an amount of Rs. 3,000/- separately towards extra nourishment. It is seen that the Tribunal has not awarded any amount towards partial loss of earnings. Eversince the date of accident appellant is unable to work. Therefore we award a sum of Rs. 60000/- for a period of one year.

8. Therefore, we re-compute the compensation in the following manner:

The appellant will be entitled to a total compensation of Rs. 13,59,200/- (Rupees Thirteen lakhs fifty nine thousand two hundred only), and the enhanced amount will carry interest @9% per annum from the date of petition. The Insurance Company is given 3 months'' time to deposit the amount.

9. Regarding the quantum of compensation awarded by the Tribunal in O.P. (MV) No. 1815/2003, it is seen that the claimant therein - rider of motor cycle- was a rubber tapper. As per Ext A15 wound certificate, the following are the injuries suffered by him in the accident:

"(1) Lacerated wound 5 X 2 cm over left forearm near elbow.

(2) Abrasion left palm.

(3) Lacerated wound 4 X 2 cm over left knee.

(4) Lacerated wound (degloving) over dorsum of left foot around 10 X 10 cm exposing all the tendons, bleeding present.

(5) Fracture left femur."

10. It is stated in the award itself that he was under inpatient treatment for a period of 61 days. As revealed from Ext. A16(a) discharge certificate issued from Muthoot Medical Centre, he was an in-patient there from 21.9.2003 to 10.11.2003. From A16(b) certificate, it is seen that he underwent treatment in Geo Medical Trust Hospital, bone and joint specialty Centre, Pathanamthitta, also, where he was admitted on 11.02.2004 and was discharged on 14.02.2004. He was again admitted there on 12.04.2006 and discharged on 19.04.2006, as evident from Ext A17. He underwent 3 major surgeries. His disability has been assessed as 20% and the Tribunal awarded a sum of Rs. 1,71,650/- as compensation. It was claimed before the Tribunal that he was working as a rubber tapper with a monthly income of Rs. 4,000/-. The Tribunal reckoned his income @ Rs. 1,500/- per mensem. The appellant was aged 19 years at the time of the accident. Reckoning the multiplier as 16 and disability percentage as 20, a sum of Rs. 57,600/- was awarded under the head of permanent disability. The learned counsel for the appellant submits that the Apex Court in its various decisions held that income in respect of those working in unorganized sectors can be reckoned as Rs. 4500/- per mensem. Even in the case of non earning members, as per the schedule, monthly income is to be taken as Rs. 1,250/-. In this case the appellant was an earning member employed as rubber tapper. Thus the enhancement is sought for on all heads saying that the amounts awarded are

thoroughly inadequate.

11. The learned counsel for the Insurance Company submitted that the Tribunal has awarded reasonable amounts on all the heads. It is also pointed out that in the police records, he was stated to be employed as a collection agent in Pentamilk.

12. The claimant was examined as PW1 and he deposed in tune with his claim. In the absence of any evidence to the contrary, we are of the view that the income reckoned at Rs. 1,500/- in the case of the appellant herein is too low. We therefore reckon his monthly income @ Rs. 2000/- It is also pointed out by the learned counsel for the Insurance Company that the amount awarded by the Tribunal under various heads are far in excess of the claim made in the claim petition. In the light of the judgments of the Apex Court in Nagappa V Gurdayal Singh 2003 (1) KLT 115 and a series of subsequent decisions, the quantum of the claim made in the claim petition cannot stand in the way of this Court in awarding just compensation even if it is in excess of the claims.

13. The Tribunal has already awarded a sum of Rs. 9,000/- for a period of 6 months towards partial loss of earning. It is seen that the appellant had been continuing on in-patient treatment itself for 61 days. The very serious injuries on his legs and the major surgeries undertaken, made him immobile at least for 8 months. Therefore we enhance the compensation under this head for a period of 8 months @ Rs. 2000/-, which will come to Rs. 16,000/- The disability of the appellant has been assessed at 20% and the Tribunal has awarded a sum of Rs. 57,600/- towards the compensation under the said head. As the injured was only 19 years, the proper multiplier is 18. Reckoning his monthly income @ Rs. 2,000/, the compensation under the head of disability will be Rs. 2000 X 12 X 18 X 20/100 = Rs. 86,400/-. The Tribunal has awarded a sum of Rs. 6,000/- towards bystander expenses and extra nourishment. We enhance the amount under the head bystander''s expense @ Rs. 150/- per day for 61 days, which will come to Rs. 9,150/-. We award a sum of Rs. 2,500/- separately towards extra nourishment. In view of the fact that the appellant had to undergo treatment for a very long period and having regard to the severe nature of injuries which he had to suffer during the period, we enhance the amount under the head of pain and suffering to Rs. 35,000/-. The Tribunal has awarded a sum of Rs. 15,000/- towards loss of amenities of life, inconvenience and discomforts caused. A 19 year old boy was admitted in the hospital and he had to undergo treatment for a period of almost 8 months on account of the injuries sustained. During that period as well as thereafter on account of the disabilities incurred on him, he has become incapable of enjoying normal amenities in life as he was enjoying before the accident. Therefore we enhance the amount to Rs. 35,000/-.

14. Therefore the award passed by the Tribunal is modified as follows:

The appellant will be entitled to a total compensation of Rs. 2,43,000/- (Rupees Two lakhs forty three thousand only), and the enhanced amount will carry interest @9% per annum from the date of petition. The Insurance Company is given 3 months'' time to deposit the amount.

The appeals filed by the claimants against the judgment and decree passed by the Tribunal are allowed and the appeals filed by the Insurance Company against the same are dismissed. The parties will suffer their respective costs.