

(2024) 12 KL CK 0111

In the High Court Of Kerala

Case No : M.A.C.A No. 3055 Of 2021 & C.O. No. 123 Of 2022

Nazar

APPELLANT

Vs

Divisional Manager

RESPONDENT

Date of Decision : 18-12-2024

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2024) 12 KL CK 0111

Hon'ble Judges : Johnson John, J

Bench : Single Bench

Advocate : Pratheesh.P, Anjana Kannath, T.S.Sreekutty

Final Decision : Dismissed

Judgement

Johnson John, J.

1. This appeal is filed by the 3rd respondent insurance company and cross objection by the claim petitioner in O.P.(MV) No. 2220 of 2018 on the file of the Motor Accident Claims Tribunal, Kollam. The contention of the appellant is that the compensation fixed by the Tribunal under various heads are on the higher side. But, according to the cross objector, the compensation fixed by the Tribunal is inadequate.

2. The claim petition was filed under Section 166 of the Motor Vehicles Act, 1988 with the averment that on 05.07.2018, at 7.30 p.m., while the claimant was walking through the southern side of the road near Ithikkara Valavil, motorcycle ridden by the 2nd respondent in a rash and negligent manner caused to hit him and thereby, he sustained serious injuries.

3. The 1st respondent is the owner of the offending vehicle and the 3rd respondent is the insurer.

4. Before the Tribunal, Exhibits A1 to A18 were marked from the side of the claimant and no evidence adduced from the side of the respondents.

5. After trial and hearing both sides, the Tribunal found that the accident occurred because of the negligence on the part of the 2nd respondent and that respondents 1 to 3 are jointly and severally liable to pay the compensation. The Tribunal has awarded a total compensation of Rs.58,17,500/- to the claim petitioner.

6. Heard Sri. S.K. Ajay Kumar, the learned counsel for the appellant and Sri. Pratheesh P., the learned counsel for the cross objector.

7. According to the claim petitioner, he was aged 44 years and earning Rs.15,000/- per month at the time of the accident. Taking note of the occupation of the claimant mentioned in Exhibit A1, First Information Statement, the Tribunal fixed his monthly income as Rs.15,000/-. In Exhibit A1, First Information Statement, it is stated that the claim petitioner is working as a cook. Even though the learned counsel for the appellant argued that the monthly income of Rs.15,000/- fixed by the Tribunal is on the higher side, considering the principles laid down by the Honourable Supreme Court in Ramachandrappa v. Royal Sundaram Alliance Insurance Co.Ltd. [(2011) 13 SCC 236] and Syed Sadiq and Others v. Divisional Manager, United India Insurance Company [(2014) 2 SCC 735 = 2014 KHC 4027], I find that the monthly income of an ordinary worker will come to Rs.13,500/- in 2018 and therefore, accepting a slightly higher income for a cook is only reasonable and in that circumstance, no interference is required in the monthly income fixed by the Tribunal.

8. As per the order in I.A. No. 1 of 2024, this Court referred the claim petitioner to the Medical Board of Government TD Medical College Hospital, Alappuzha and the certificate of disability issued by the Medical Board is marked as Exhibit X1. The treatment records of the claim petitioner shows that he sustained TB/® Frontotemporoparietal A/C SDH + IPH/A/C SAH ® Sylvian Fissure/Tentorial Bleed/Grade II Splenic injury/#(L) 10 TH RIB.

9. Exhibit X1 disability certificate shows that the claim petitioner is having 98% permanent disability, which includes locomotor, visual and mental disability. Therefore, considering the treatment records and Exhibit X1 disability certificate and in view of the principles laid down by the Honourable Supreme Court in Raj Kumar v. Ajay Kumar, (2011) 1 SCC 343], I find that the Tribunal is justified in accepting 100% functional disability and awarding a total compensation of Rs.31,50,000/- under the head of loss of earning capacity.

10. The learned counsel for the cross objector/claim petitioner pointed out that the claim petitioner is totally bedridden and he cannot move without the assistance of a bystander and in spite of recording such a finding, the Tribunal granted only Rs.22,68,000/- towards bystander's expenses. The Tribunal calculated bystander's expenses at the rate of Rs.450/- per day by accepting the multiplier of 14.

11. The learned counsel for the cross objector cited the decision of the Honourable Supreme Court in Baby Sakshi Greola v. Manzoor Ahmad Simon

[2024 KHC Online 6694], wherein the Honourable Supreme Court accepted the minimum wages paid to a skilled worker on a full time basis for calculating the compensation towards bystander's expenses. Therefore, considering the facts and circumstances, I find that the salary payable to a skilled worker as on the date of occurrence can be fixed as Rs.15,000/-. When the bystander's expenses are calculated as per the revised criteria, the same would be Rs. 25,20,000/- [15000 x 12 x 14]. The Tribunal has already granted Rs.22,68,000/- and therefore, the cross objector/claim petitioner is entitled for Rs.2,52,000/- as enhanced compensation under this head.

12. The learned counsel for the cross objector/claim petitioner pointed out that the Tribunal granted only Rs.1,20,000/- towards pain and sufferings. Considering the nature of injuries, treatment and disability, Rs.2,50,000/- can be granted as compensation towards pain and sufferings. Therefore, an additional amount of Rs.1,30,000/- is awarded towards pain and sufferings.

13. The Tribunal granted only Rs.80,000/- towards future treatment. Considering the nature of injuries and disability, I find that the compensation fixed for future treatment is on the lower side and that the same can be enhanced to Rs.3,00,000/-. Therefore, an additional amount of Rs.2,20,000/- is awarded under the head 'compensation for future treatment'.

14. Accordingly the cross objector/claim petitioner is entitled to the enhanced compensation as given below:

Particulars

Compensation awarded by the Tribunal (Rs.)

Additional amount granted by this Court (Rs.)

Bystander's expenses

22,68,000/-

2,52,000/-

Pain and sufferings

1,20,000/-

1,30,000/-

Compensation for future treatment

80,000/-

2,20,000/-

Total enhanced compensation

6,02,000/-

15. In the result, the appeal is dismissed and the cross objection is allowed in part. Thus, a total amount of Rs.6,02,000/- (Rupees Six Lakhs and Two Thousand only) is awarded as enhanced compensation. The said amount shall carry interest at the rate of 8% per annum from the date of the application till realization. The cross objector would also be entitled to proportionate costs in the case. The claimant shall furnish the details of the bank account to the insurance company for transfer of the amount.