
(2012) 03 KL CK 0043
In the High Court Of Kerala
Case No : M.A.C.A. No. 446 of 2005

P. Balasubramanian

APPELLANT

Vs

T.K. Aneesh Kumar @ Babu and Others

RESPONDENT

Date of Decision : 30-03-2012

Acts Referred:

Citation : (2012) 03 KL CK 0043

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

Bench : Division Bench

Advocate : T.K. Vipindas, for the Appellant; A.C. Devy, Sri. E.M. Joseph and Sri. Saju J. Vallyara, for the Respondent

Final Decision : Allowed

Judgement

Ramakrishna Pillai, J.—The appellant, a 45 year old man met with an accident on 03/08/94 as the car by which he was travelling collided with a van which was coming from the opposite direction. The accident occurred due to the negligence of the driver of the van which was insured with the 6th respondent Insurance Company. Against the claim of Rs. 7 lakhs, the learned Tribunal awarded a sum of Rs. 2,06,000/- , the adequacy of which is under challenge in this appeal. We have heard the Learned Counsel for the appellant and the learned Standing Counsel for the respondent Insurance Company. We have also perused the impugned award.

2. The Learned Counsel for the appellant took us to the details of injuries made mention of at paragraph 17 of the impugned award.

1. Lacerated Wound 3 x 1 cm skin deep on the upper eyelid Right.

2. Lacerated wound 3 x 1 cm skin deep on the Right side of face.

3. Abrasion 3 x 1 cm on the nose.

4. Lacerated wound 2 x 1 cm skin deep on the left upper eyelid.

5. Lacerated wound 1 x 0.5 cm skin deep on the left side of face.

6. Fracture shaft Right femur.

7. Posterior dislocation left hip with fracture head of femur.

3. The fracture to the femur was treated with open reduction and internal fixation with "K-Nailing". He was hospitalized for 18 days. Considering the nature and gravity of the injuries, the learned Tribunal has awarded fairly high amount of compensation towards pain and suffering and towards loss of amenities in life during the treatment and convalescence period. The Learned Counsel for the appellant would submit that the appellant was a Diploma holder in Mechanical Engineering and was doing his own business i.e. erecting boilers in industrial units. What was alleged in the petition was that he was earning a monthly income of Rs. 8,000/- . The learned Tribunal fixed the monthly income of the appellant at Rs. 4,000/- which according to the Learned Counsel for the appellant is on the lower side. But we are of the view that as the appellant has not produced any cogent evidence to show what exactly was his income on the date of the accident and as the accident was in the year 2004, the income fixed by the learned Tribunal appears to be just as it is only reasonable to presume that a man holding a Diploma in Mechanical Engineering might have earned at least Rs. 4,000/- per month during the relevant period. So we see no justification to interfere with the monthly income fixed by the learned Tribunal.

4. Another argument advanced by the Learned Counsel for the appellant is that though Ext.A11 Disability Certificate shows that the appellant is having residual disability of 35% the learned Tribunal has fixed appellant's residual disability as 25% which according to the Learned Counsel for the appellant is unjustifiable.

5. The Learned Counsel for the 6th respondent per contra would submit that the disability certificate was not proved through the Doctor who had issued the same. We also feel that the percentage of disability made mention of in the disability certificate is on the higher side. The learned Tribunal adopting the monthly income of Rs. 4,000/- and adopting the correct multiplier has awarded a sum of Rs. 1,20,000/- towards compensation for permanent disability. We are of the considered view that the same does not call for interference by us. However, we notice that the learned Tribunal has awarded loss of earnings only for four months calculating at the rate of Rs. 4,000/- per month. We are of the view that because of the injuries sustained by the appellant he might not have been able to do any work at least for six months. Hence, towards loss of earnings for six months the appellant is entitled to get an additional sum of Rs. 8,000/- .

6. We also notice that the appellant was hospitalized for about 18 days and is entitled to get bystander's expenses at the rate of Rs. 150/- per day as the accident was in the year 1994. Hence, towards bystander's expenses we are awarding a sum of Rs. 2,700/- to the appellant.

7. Since reasonable compensation has been awarded by the learned Tribunal

under other heads, we do not interfere with the same.

8. Thus the appellant is entitled to get an additional sum of Rs. 10,700/- over and above what has been awarded by the learned Tribunal. This additional amount shall carry interest at the rate of 7% per annum from the date of claim petition till realisation. The appeal is allowed. The impugned award shall stand modified as above.