(2021) 10 KL CK 0124

In the High Court Of Kerala

Case No : MACA NO. 950 Of 2013

P.C.Rasool, Rep. By His Power Of Attorney Holder P.C.Rahees APPELLANT

Vs

M.Surendran RESPONDENT

Date of Decision : 22-10-2021

Acts Referred:
Code of Civil Procedure, 1908 — Order 41 Rule 27

Citation : (2021) 10 KL CK 0124

Hon'ble Judges : T.R.Ravi, J

Bench : Single Bench

Advocate : Grashious Kuriakose, George Mathews, Rajan P.Kaliyath

Final Decision : Partly Allowed

Judgement

T.R.Ravi, J.

1. The appellant, while riding a motorcycle was hit by a lorry. The accident happened on 25.02.2005. The appellant was 30 years of age at the time of the accident. He claimed that he was working as a Salesman in Dubai and earning a salary of Rs.20,000/- per month. It is seen from the injuries that the applicant had suffered, that there were 4 serious fractures which had to be corrected. The appellant was in the hospital for 17 days. The Tribunal awarded a sum of Rs.44,200/- as compensation based on a notional income of Rs.3,000/- per month. The appellant has approached this Court seeking enhancement of the compensation. The appellant has filed unnumbered I.A.No. 1 of 2021 purporting to be under Order 41 Rule 27 of the Code of Civil Procedure, producing the photocopies of 90 bills relating to purchase of medicines during the period from 25.02.2005 to 16.02.2011. It is stated in the affidavit in support of the petition that even though the originals of the bills were entrusted with the Advocate the same appear to have been misplaced and only recently the photocopies were retrieved. The appellant seeks enhancement of compensation under the heads loss of earnings, medical expenses, bystander expenses, pain and suffering and loss of amenities.

2. Having considered the contentions of the appellant and the respondents, I am of the opinion that the appellant is entitled to enhancement of the compensation awarded by the Tribunal. The accident happened on 25.02.2005 and going by the dictum in Ramachandrappa v. Manager, Royal Sundaram Alliance Insurance Co.Ltd., reported in [AIR 2011 SC 2951], the notional income ought to have been fixed at Rs.5,000/- per month. Since no evidence is produced regarding the salary that was being earned in Saudi Arabia, a notional salary alone can be considered. The appellant will be entitled to an additional sum of Rs.10,000/- (2000 x 5) as compensation for loss of earnings. The appellant who belongs to Azhikode had to be admitted in a hospital in Mangalore. I am of the opinion that the bystander expenses awarded should be reworked at Rs.300/- per day for 17 days. The appellant would be entitled to Rs.3,400/- as additional compensation under the head bystander expenses. The appellant had claimed a sum of Rs.50,000/- towards pain and sufferings. Having regard to the fact that he had suffered four serious fractures and other injuries and had to remain in hospital for 17 days, the amount of Rs.16,500/-awarded by the Tribunal is on the lower side and is not justified. I am of the opinion that an additional sum of Rs.15,000/- is to be granted as compensation for pain and suffering. The wound certificate and the discharge summary shows that there is deformity in the right thigh of the appellant. Having regard to the nature of the injuries, I am of the opinion that the amount of Rs.3,000/- granted by the Tribunal for loss of amenities and conveniences is very less. The appellant is entitled to a sum of Rs.20,000/- towards loss of amenities and conveniences. An additional amount of Rs.17,000/- is to be hence awarded under the above head.

3. The appellant has produced 90 bills relating to medical expenses. The total amount under the bills comes to Rs.84,407/-. Except a few bills, all the other bills relate to the period of the accident. However, since photocopies alone has been produced before this Court, it will not be proper for this Court to accept the same in evidence and grant any amount as compensation towards medical expenses. However, I am of the opinion that the appellant should be afforded a chance to prove the said documents before the Tribunal.

4. In the circumstances, the appeal is allowed in part. The appellant is entitled to an additional compensation of Rs.45,400/-(Rupees Forty Five Thousand Four Hundred only) with interest at the rate of 9% per annum from the date of the claim petition till realisation. The appeal was filed with a delay of 263 days. The delay in filing the appeal was condoned by order dated 12.03.2021, on condition that the appellant will not be entitled to interest on the enhanced compensation that might be awarded by this Court, for the said period of 263 days. The interest awarded by this Court on the additional compensation shall not be payable for the said 263 days. The 3rd respondent Insurer will deposit the additional compensation awarded by this Court along with the interest thereon, before the Tribunal, within two months from the date of receipt of a copy of this judgment. The disbursal of the additional compensation so deposited, to the appellant, will be in accordance with law.

5. Regarding the claim for medical expenses that are claimed to have been incurred, the case is remanded to the Tribunal to afford an opportunity to the appellant to prove his case regarding the medical expenses that have been incurred by him, which according to him could not be proved by production of documents earlier. It is made clear that the remand is only for the said purpose. Since the photocopies of the bills were produced before the Court only in September 2021, it is made clear that the appellant will not be entitled to any interest on the amount that may be awarded by the Tribunal towards medical expenses, on consideration of the claim after remand.

The parties will bear their respective costs.