
(2010) 06 KL CK 0065
In the High Court Of Kerala
Case No : M.A.C.A. No. 962 of 2004

Poulose

APPELLANT

Vs

United India Insurance Co. Ltd.

RESPONDENT

Date of Decision : 09-06-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2010) 06 KL CK 0065

Hon'ble Judges : P.Q. Barkath Ali, J;A.K. Basheer, J

Bench : Division Bench

Advocate : Grashious Kuriakose, for the Appellant; P.A. Reziya, for the Respondent

Judgement

P.Q. Barkath Ali, J.—In this appeal u/s 173 of the Motor Vehicles Act the claimant in OP(MV) 916/1999 on the file of the Motor Accidents Claims Tribunal, Irinjalakkuda, challenges the judgment and award of the Tribunal, dated, September 18, 2003 awarding a compensation of Rs. 3,70,000/- for the loss caused to the claimant on account of the death of his son George as a result of the injuries sustained by him in a motor accident.

2. The facts leading to this appeal in brief are these:

The deceased George was aged 29 and was a Bus Conductor at the time of the accident. Initially the claim petition was filed by him claiming compensation for the injuries sustained by him, but during the pendency of the OP he died. Therefore the present appellant, who is the father of the deceased, was impleaded as his legal heir. On May 27, 1999 at 9.15 a.m. the deceased was travelling in the bus bearing KRR 7806 as Bus Conductor. The bus was proceeding along Karalam - Vellikulangara public road and when the bus reached near Veena Workshop, Irinjalakuda, due to the rash and negligent driving of the offending bus by the 2nd respondent, the deceased was thrown out of the bus and sustained serious injuries. According to the deceased the accident occurred due to the negligence on the part of the 2nd respondent. The 1st respondent as

the owner, the 2nd respondent as the driver and the 3rd respondent as the insurer of the offending bus are jointly and severally liable to pay compensation to the claimant.

3. Due to the injuries sustained the deceased was completely paralysed and therefore the claim petition was filed by him represented by his father, the present claimant. During the pendency of the petition, the deceased died. Then the compensation was claimed for the loss caused to the appellant on account of the death of the deceased in the accident.

4. Respondent No. 2, the driver of the offending bus, remained absent and was set ex parte by the Tribunal. The 1st respondent, owner of the offending bus, filed a written statement contending that there was no negligence on the part of the 2nd respondent. The 3rd respondent, insurer of the offending bus, filed a written statement admitting the policy.

5. PWs.1 and 2 were examined and Exts.A1 to A15 series and Exts.X1 and X2 were marked on the side of the claimant. On the side of the contesting 3rd respondent, Ext.B1 was marked before the Tribunal. On an appreciation of evidence the Tribunal found that the accident occurred due to the negligence on the part of the 2nd respondent and awarded a compensation of Rs. 3,70,000/- with interest at 9% per annum from the date of petition till realisation and proportionate cost. The petitioner has now come up in appeal claiming enhancement of compensation awarded by the Tribunal.

6. Heard the Counsel for the appellant and the Counsel for the Insurance Company.

7. The accident is not disputed. The finding of the Tribunal that the accident occurred due to the negligence on the part of the 2nd respondent is not challenged in this appeal. Therefore, the only question which arises for consideration is whether the claimant is entitled to any enhanced compensation.

8. The deceased sustained the following injuries as revealed from Ext.A5 copy of the wound certificate and Ext.A6 discharge summary issued from the hospital:

1. Fracture ribs 1 to 7 Haemopneumothorax.
2. Fracture spine D6, D7, D8 vertebra.
3. Fracture transverse process of D8 & D9.

Due to the fracture to the spine and vertebrae the patient became paraplegic. He died on February 4, 2003.

9. The Tribunal awarded a total compensation of Rs. 3,70,000 /-. The break up of the compensation awarded is as under:

loss of earnings - Rs. 66,000/- transportation - 3,000/- bystander's expenses - 5,000/- medical expenses - 2,00,000/- loss of dependency - 60,000/- pain and suffering - 25,000/- loss of love and affection - 8,000/- funeral expenses -

3,000/-

10. The Counsel for the appellant/claimant sought enhancement of the compensation for the pain and suffering endured, loss of amenities and enjoyment of life, loss of earnings and attendant's expenses. The Tribunal took the monthly income of the deceased as Rs. 1500/-. After deducting one-third for his personal expenses, took Rs. 1000/- as his contribution to the family and adopted a multiplier of 5 as his father was aged 60 and awarded Rs. 60,000/- for loss of dependency. As the deceased was a Bus Conductor, we feel that his monthly income can be reasonably estimated at Rs. 2250/- which comes to Rs. 27,000/- per annum. After deducting one-third for his personal expenses, Rs. 18,000/- per annum can be taken as his annual contribution to his family. The multiplier adopted by the Tribunal as 5 is not seriously challenged. Thus calculated, for the loss of dependency, the appellant is entitled to a compensation of Rs. 90,000/-. Thus, on this count the appellant is entitled to an additional compensation of Rs. 30,000/-.

11. The Tribunal awarded a compensation of Rs. 25,000/- for the pain and suffering endured by the deceased. The accident occurred on May 27, 1999 and he died on February 4, 2003. Therefore for pain and suffering, we feel that a compensation of Rs. 50,000/- would be reasonable. Thus on this count the claimant is entitled to an additional compensation of Rs. 25,000/-.

12. For loss of amenities and enjoyment of life, no compensation was awarded by the Tribunal. Taking into consideration the injuries sustained by the deceased, we feel that a compensation of Rs. 25,000/- would be reasonable on this count.

13. There is another aspect in this case. The deceased was laid up for about three years and eight months i.e. about 44 months. The Tribunal awarded Rs. 66,000/- for loss of earnings at the rate of Rs. 1500/- per month. We have fixed his monthly salary at Rs. 2250/-. Therefore towards loss of earnings, he is entitled to a compensation of Rs. 99,000/-. Thus on this count the claimant is entitled to an additional compensation of Rs. 33,000/-.

14. For attendant's expenses, only Rs. 5000/- was awarded by the Tribunal, which appears to be very low. Taking into consideration the duration of the period the deceased was laid up, we feel that a compensation of Rs. 15,000/- would be reasonable on this count. Thus on this count the claimant is entitled to an additional compensation of Rs. 10,000/-. As regards the compensation awarded under other heads, we find the same to be reasonable and therefore we are not disturbing the same.

15. Thus the claimant is entitled to an additional compensation of Rs. 1,23,000/-. He is entitled to interest @ 9% per annum from the date of petition till realisation and proportionate cost. The respondent herein being the insurer of the offending vehicle shall deposit the amount before the Tribunal within two months from the date of receipt of a copy of this judgment. The award of the Tribunal is modified to the above extent.

The appeal is disposed of as found above.