

(2013) 07 KL CK 0109
In the High Court Of Kerala
Case No : M.A.C.A. No. 1126 of 2013

Priyanka

APPELLANT

Vs

Vipin Babu, Sajeew and The Oriental Insurance Company
Limited

RESPONDENT

Date of Decision : 11-07-2013

Acts Referred:

Citation : (2013) 07 KL CK 0109

Hon'ble Judges : S. Siri Jagan, J; K. Ramakrishnan, J

Bench : Division Bench

Advocate : T.C. Suresh Menon and Sri. A.R. Nimod, for the Appellant; George Cherian (Thiruvalla), for the Respondent

Final Decision : Disposed Off

Judgement

K. Ramakrishnan, J

1. The petitioner in O.P. (MV) No. 1019/2008 on the file of the Motor Accidents Claims Tribunal, Irinjalakuda, is the appellant herein. The appellant was a minor at the time of filing the application and she filed the application for compensation for the injuries and consequential disabilities sustained by her in a motor vehicle accident caused on account of the rash and negligent driving of the vehicle by the 2nd respondent, owned by the 1st respondent and insured with the 3rd respondent. After considering the evidence on record, the Tribunal found that the accident occurred due to the negligent driving of the 2nd respondent and awarded a total compensation of Rs. 65,673/- as follows:

Medical and miscellaneous

Rs. 41,373/-

Transportation expenses

Rs. 500/-

Pain and suffering

Rs. 13,000/-

Extra nourishment

Rs. 1,400/-

Loss of amenities and conveniences etc.

Rs. 8,000/-

Bystander expenses

Rs. 1,400/-

Total

Rs. 65673/-

Dissatisfied with the quantum of compensation awarded by the Tribunal, the appellant has filed this appeal before this Court.

Heard counsel for the appellant and the Insurance Company.

2. Since the liability of the Insurance Company is admitted, we feel that notice to other respondents can be dispensed with and the appeal can be disposed of at the admission stage itself, after hearing the counsel for Insurance Company.

3. Counsel for the appellants submitted that the Tribunal has accepted the disability of 4.13%, but no amount has been awarded under the head "loss of earnings capacity" and the amount of compensation awarded under the head "loss of amenities" is also less. So, he claimed enhancement on those heads.

4. On the other hand, counsel for the Insurance Company submitted that since the appellant was a student and there is no evidence to show that this will affect her earning capacity, the amount awarded by the Tribunal is just and proper.

5. We have considered the rival contentions of the parties. It is an admitted fact that the claimant in the lower court was a minor and a student and a non-earning member. It is true that as per Ext. A8 disability certificate issued by PW1, permanent disability has been assessed at 4.13%. But, there is no evidence to show that it is likely to affect her earning capacity. But, considering the nature of the injury sustained and also the disability assessed by the doctor, we feel that this may likely to affect her amenities in her personal life in future. So, considering this, the amount of compensation awarded under the head "loss of amenities" is less and we feel that the same can be re-fixed as Rs. 15,000/- instead of Rs. 8,000/- awarded by the Tribunal. We do not find any reason to enhance any amount under any of the other heads since the amount of compensation awarded is just and reasonable.

In all, the appellant would be entitled to additional compensation of Rs. 7,000/-,

which the 3rd respondent is liable to pay interest at the rate of 9% per annum from the date of the claim petition till the date of payment, within two months.

With the above modification of the award of the Tribunal, this appeal is disposed of.