
(2012) 07 KL CK 0194
In the High Court Of Kerala
Case No : MACA. No. 1051 of 2007 (D)

Radhamani

APPELLANT

Vs

Devaki and The New India Assurance Company Ltd.

RESPONDENT

Date of Decision : 16-07-2012

Acts Referred:

Citation : (2012) 07 KL CK 0194

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

Bench : Division Bench

Advocate : Avm. Salahudin, for the Appellant; Thomas Mathew Nellimoottil Advocate, for the Respondent

Final Decision : Allowed

Judgement

Ramakrishna Pillai, J

1. The appellant, a 39 year old lady while walking along the road on 15/04/01 was hit down by a jeep. Against the claim of Rs. 2 lakhs the learned Tribunal awarded a sum of Rs. 46,870/- as compensation together with interest at the rate of 6% per annum attributing negligence against the driver of the jeep. As the second respondent Insurance Company admitted the policy of the vehicle involved in the accident, they were directed to pay the compensation. In this appeal, the appellant is challenging the adequacy of the compensation awarded to her.

2. We have heard the learned counsel for the appellant and the learned counsel for the second respondent Insurance Company. The impugned award was also perused.

3. Medical records reveal that the appellant sustained a very serious head injury. Haemorrhage was detected in the brain. She was unconscious for about six days. At the time of admission bleeding from right ear was noticed. She was hospitalised for a total period of 34 days. Towards compensation for pain and suffering, the learned Tribunal awarded a sum of Rs. 20,000/-. Considering the

nature and gravity of the injuries and long period of hospitalisation, we are awarding an additional sum of Rs. 5,000/- under that head.

4. Towards loss of amenities in life, we notice that no amount was awarded by the Tribunal. Undoubtedly on account of the head injury she might have been bedridden for a good number of days. So she has to be awarded a just and reasonable sum for loss of amenities in life during the period of treatment and convalescence. Hence we award a sum of Rs. 15,000/- under that head.

5. According to the appellant she was earning a monthly income of Rs. 5,000/-. It was claimed that she was a tailor. The learned counsel for the respondent would argue that there is absolutely nothing on evidence to prove the avocation of the appellant. The accident was in the year 2001 and the appellant was aged 39 years. So it is only reasonable to presume that she might have been earning at least Rs. 2,000/- per month by engaging herself in any job. Presumably she might not have been able to go for work at least for three months. Hence, towards loss of earnings for three months the appellant is entitled to get a sum of Rs. 6,000/-. As the learned Tribunal has awarded only a sum of Rs. 3,000/- under that head the appellant is entitled to get an additional sum of Rs. 3,000/- towards loss of earnings.

6. As already noticed the appellant was hospitalised for 34 days. As the accident was in the year 2001, she is entitled to get bystander's expenses at the rate of Rs. 200/- per day. The learned Tribunal has awarded a sum of Rs. 2,250/- towards attendant's charges and extra nourishment. We reckon the said amount towards extra nourishment and award to the appellant a sum of Rs. 6,800/- towards bystander's charges.

7. Ext.C1 disability certificate which states that the appellant is having a residual disability of 2% was admitted in evidence. The same was accepted by the Tribunal and the appellant was awarded a sum of Rs. 4,320/- towards compensation for permanent disability. As we have re-fixed the monthly income of the appellant the compensation for permanent disability has to be re-worked on the basis of the revised monthly income adopted by us. Thus, we award to the appellant a sum of Rs. 4,320/- more towards compensation for permanent disability.

8. Thus in total the appellant becomes entitled to get an additional sum of Rs. 34,120/- over and above what has been awarded by the learned Tribunal which will carry interest at the rate of 7.5% per annum from the date of claim petition till realisation. The appeal is allowed. The impugned award shall stand modified as above.