

(2012) 07 KL CK 0090
In the High Court Of Kerala
Case No : MACA. No. 425 of 2007

Rajesh T.K.

APPELLANT

Vs

Satheesan K.R. and The Managing Director, K.S.R.T.C.,
Trivandrum

RESPONDENT

Date of Decision : 19-07-2012

Acts Referred:

Citation : (2012) 07 KL CK 0090

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

Bench : Division Bench

Advocate : V.A. Omanakuttan, for the Appellant; Babu Joseph Kuruvathazha, Sc, Ksrtc Advocate and Sri. Joy George, SC, K.S.R.T.C. (R2) Advocate, for the Respondent

Final Decision : Allowed

Judgement

Pius C. Kuriakose,J

1. A concrete worker, the appellant, sustained fracture of left humerus in a road traffic accident which occurred while he was traveling in a KSRTC Bus. In fact, it has been found that due to the rash and negligent manner in which the vehicle was driven, the bus the bus capsized resulting in injuries to the appellant. The appellant's grievance is that the learned Tribunal did not award adequate compensation for injuries sustained by him. He claimed Rs.2 Lakhs as total compensation and the learned Tribunal awarded him only Rs.52,300/- under various heads. In this appeal, it is urged that the compensation awarded by the learned Tribunal under various head is quite inadequate. We have heard the submissions of Sri.V.A.Omanakuttan learned counsel for the appellant and Sri. Joy George learned standing counsel for the KSRTC.

2. Argument of Sri.Omanakuttyan was that there is gross inadequacy in the compensation awarded by the learned Tribunal. Whereas the submission of Sri. Joy George was that the learned Tribunal has awarded reasonable compensation

and there is no justification for increasing the same.

3. Having anxiously considered the rival submissions addressed at the Bar and having carefully read through the impugned award, we are of the view that there is some inadequacy in the compensation awarded by the learned Tribunal. The appellant was admittedly a concrete worker. The learned Tribunal adopted his monthly income notionally to be Rs.1500/- only. According to us, there was justification for adopting the monthly income of the appellant as Rs.2500/-. The learned Tribunal awarded loss of earning to the appellant for three months. Having seen the nature of the injuries, we are of the view that the appellant could not do any work for four months. This means that towards loss of earning, the appellant will become eligible for Rs.5,500/- more which amount we award to the appellant.

4. Having seen the nature of the injuries, we feel that there is some inadequacy in the compensation awarded by the learned Tribunal towards pain and suffering. We award Rs.5,000/- more towards pain and suffering.

5. The learned Tribunal calculated by stander's expenses at the rate of Rs.100/- per day. We are of the view that by stander's charges should be awarded at the rate of Rs.200/- per day. This means, that we award Rs.1,000/- more towards by stander's charges.

6. The appellant produced Ext.A7 disability certificate issued by a Medical Board. Going by Ext.A7, the appellant suffered a permanent partial disability of 10%. The Tribunal discarded Ext.A7 certificate on the reason that Ext.A7 was not properly proved by examining one of the authors of Ext.A7. According to us, Ext.P7 being issued by the Medical Board the learned Tribunal was not justified in insisting on formal proof by examining one of the authors. But, at the same time, we are convinced that the appellant suffered permanent partial disability. We fix the percentage of permanent partial disability suffered by the appellant on account of the injuries at 7. When disability compensation is calculated adopting the above percentage and taking into account the monthly income of the appellant as 2,500/-, it will be seen that the appellant is entitled for a total amount of Rs.35,700/- towards disability compensation. As the learned Tribunal has awarded Rs.10000/-, the said amount is to be deducted. This means that, towards disability the appellant is awarded Rs.25,700/-. Thus in total, we award to the appellant Rs.37200 (5500 + 5000 + 1000 + 25700) over and above what has been awarded by the learned Tribunal. This additional amount will carry interest at the rate of 7% p.a.

The appeal is allowed and the impugned award shall stand modified as above.