(2012) 08 KL CK 0217

In the High Court Of Kerala

Case No : MACA. No. 1637 of 2008

Raju.M. K — APPELLANT

Vs

Mr.T.K. Krishnankutty, Tholeth House, Marampilly.P.O, Perumbavoor, K.U. Surendran and The New India Assurance Co. Ltd, Branch Perumbavoor — RESPONDENT

Date of Decision : 03-08-2012

Acts Referred:

Citation : (2012) 08 KL CK 0217

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

Bench : Division Bench

Advocate : K. Janardhanan, for the Appellant; P.G. Ganappan Advocate R3, for the Respondent

Final Decision : Allowed

Judgement

Pius C. Kuriakose, J.—The appellant, an auto rickshaw driver sustained (1) lacerated wound over base of right big toe and 2nd toe (dorsal aspect) exposing proximal phalanx fracture with severe deformity, (2)lacerated wound over lateral malleolus right ankle with swelling, (3) small lacerated wound over left temporal region,(4) comminuted fracture proximal phalanx of big toe with contamination and bone loss, (5) comminuted fracture shaft of proximal phalanx of 2nd toe with severe deformity and (6) extra articular distal fracture right tibia in a road traffic accident involving the authrickshaw driven by him and a lorry driven rashly and negligently by its driver. It has been found that the accident occurred due to negligence of the lorry driver and that the lorry was duly insured with the third respondent Insurance Company. The appellant''s case is that the Motor Accidents Claims Tribunal did not award him adequate compensation for the injuries sustained by him in the accident. He claimed Rs. 1,88,000/- under various heads and the Tribunal awarded to him only Rs. 77,000/- together with interest from the date of application at the rate of 7.5 % per annum till date of award and thereafter at the rate of 8% per annum. According to the appellant this is inadequate. We have heard the submissions of Mr. Manu Raj, learned counsel for the appellant and Sri.P.G.Ganappan, learned standing counsel for the Insurance Company.

2. The submission of Mr. Manu Raj was that there is inadequacy in the compensation awarded by the MACT. Whereas Mr. Ganappan''s submission was that there is no such inadequacy. Having anxiously considered the submissions addressed at the Bar and having carefully considered the impugned award in detail we are in agreement with Manu Raj that there is inadequacy in the compensation awarded by the MACT. Having seen the nature of the injuries suffered by the appellant we are of the view that the compensation of Rs. 18,000/- presently awarded towards pain and suffering is not sufficient. We award to the appellant Rs. 7000/- more towards pain and suffering. By way of loss of amenities (discomfort and inconvenience) the Tribunal awarded to the appellant only Rs. 7000/-. This is also inadequate. We award to the appellant Rs. 8000/- more towards this head. The appellant was awarded loss of earnings for three months only. According to us the appellant should have been awarded loss of earnings for six months. We therefore award to the appellant Rs. 6000/- more towards loss of earnings. The learned Tribunal has awarded a global sum of Rs. 6000/- towards various heads such as transportation, hospitalisation, attendant expenses, extra nourishment and damage to clothings. We reckon the above sum of Rs. 6000/- as compensation awarded towards heads other than attendant expenses. Towards attendant expenses we separately award to the appellant Rs. 6000/-. The appellant produced a disability certificate which certifies that the appellant suffered permanent disability of 7%. The learned Tribunal surprisingly did not award to the appellant any amount towards disability. Having seen the nature of injuries we are sure that the appellant would have suffered permanent disability at least 5%. The appellant in our view is eligible for disability compensation. Calculating the disability compensation we find that the appellant is eligible for the award of a sum of Rs. 20,400/- towards disability. We award that amount to the appellant towards disability. Thus in total we award to the appellant an additional amount of Rs. 47,400/-. This amount will also carry interest at the rate of 7% per annum from the date of petition till realisation.

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