
(2012) 02 KL CK 0118
In the High Court Of Kerala
Case No : M.A.C.A. No. 80 of 2012

Ratheesh Babu

APPELLANT

Vs

P.M. Rijeesh and The Oriental Insurance Company Ltd.

RESPONDENT

Date of Decision : 08-02-2012

Acts Referred:

Citation : (2012) 02 KL CK 0118

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

Bench : Division Bench

Advocate : K.V. Reshmi, for the Appellant; M. Jacob Murickan and Sri. George Cheriyan for R2, for the Respondent

Final Decision : Allowed

Judgement

A.V. Ramakrishna Pillai, J.—Under challenge is the award passed by the Motor Accident Claims Tribunal, Kozhikode in O.P. (MV) No. 538/2004. The appellant approached the Tribunal claiming compensation to the tune of Rs. 2,00,000/- (initially the claim was for Rs. 2,50,000/- which was subsequently limited to Rs. 2,00,000/-). The Tribunal after considering the evidence on record awarded a sum of Rs. 1,24,379/- as compensation. Adequacy of the said compensation is under challenge.

2. We have heard the learned counsel appearing for the appellant as well as the learned counsel for the second respondent.

3. Allegedly on 11/2/2004 while the appellant was walking along Pottammal - Palazhi Road, he was knocked down by a motor cycle which was insured with the 2nd respondent - Insurance company. The learned counsel for the appellant pointed out that the appellant who sustained serious head injuries, was admitted to Medical College Hospital, Kozhikode where he had undergone treatment for about 28 days. The medical reports produced in the case, viz. Ext.A2 wound certificate and Ext.A5 C.T. scan report, would reveal that the appellant had sustained fracture to right frontal sinus with homosinus involving frontal ethmoid

and maxillary sinus. In addition to that there was fracture to the medial wall of right orbit with hydrodurity pockets. However, no hemorrhage was revealed as per the C.T. scan report. Taking into account the nature of injuries, the learned Tribunal has awarded a sum of Rs. 10,000/- as compensation for pain and suffering which according to the learned counsel for the appellant is very low. We find force in the argument. Considering the gravity of the injuries and the period of hospitalization, some more amount could have been awarded by the learned Tribunal towards pain and suffering. Hence, we are awarding an amount of Rs. 5,000/- as additional compensation for pain and suffering. The learned Tribunal has awarded a sum of Rs. 103680/- towards residual disability, though it is wrongly stated as compensation for loss of amenities. But it is relevant to note that towards loss of amenities, for the period during which the appellant had undergone treatment and consequent rest no amount was awarded. Considering the gravity of the injuries, the period of hospitalization (28 days) as well as the period during which the appellant was compelled to take rest, we are awarding a sum of Rs. 5,000/- as compensation for loss of amenities. Towards by-stander's expenses, the Tribunal has awarded Rs. 500/- at the rate of Rs. 100/ per day. Evidently , the appellant was hospitalized for about 28 days. Hence, we are of the view that by-stander's expenses for 28 days at the rate of Rs. 200/- per day has to be awarded to the appellant. Recalculated as above, the appellant will be entitled to a sum of Rs. 5600/- towards by-stander's expenses. Hence, we are awarding Rs. 5,100/- more on that count. Thus in total, the appellant is entitled to a sum of Rs. 15,100/- (Rupees fifteen thousand one hundred only) over and above what has been awarded by the Tribunal.

4. In the result, the appeal is allowed and the award is modified as above.

5. The additional amount of compensation will carry interest at the rate awarded by the Tribunal.