
(2012) 08 KL CK 0218
In the High Court Of Kerala
Case No : MACA. No. 67 of 2007

Reghunathan @ Reghu

APPELLANT

Vs

Wilson James, Sinimon @ Appoos and The Branch Manager,
The United India Insurance CO.Ltd., T.B. Junction,
Thodupuzha

RESPONDENT

Date of Decision : 03-08-2012

Acts Referred:

Citation : (2012) 08 KL CK 0218

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

Bench : Division Bench

Advocate : Annie Paul and Sri. Philip J. Vettickattu, for the Appellant; P. Muraleedharan Advocate R3, for the Respondent

Final Decision : Allowed

Judgement

Ramakrishna Pillai, J.—The appellant a 32 year old toddy tapper while riding his scooter on 7-2-2001 was hit down by a tempo van coming from the opposite direction. Against the claim of Rs. 5 lakhs the learned Tribunal awarded a sum of Rs. 2,25,000/- as compensation together with interest at the rate of 6% per annum attributing negligence against the second respondent who was the driver of the tempo van. As the third respondent admitted the policy of the offending vehicle they were directed to pay the compensation. In this appeal the appellant is challenging the adequacy of compensation awarded. Arguments have been heard and the impugned award was also perused.

2. Medical records would reveal that the appellant sustained a fracture at the distal 1/3 of shaft of right femur and segmental fracture at mid 1/3 of shaft of left femur. Fracture to left mandible as well as to the subcondyle of the left mandible were also noted. In addition to that there were abrasions and lacerated wounds also. The fracture to right femur was managed by nailing and fracture to mandible was managed by dental wiring. Medical records would reveal that he was hospitalised for a period of 50 days under three different spells. Going

through the award we notice that a just and fair sum has been awarded by the Tribunal towards compensation for pain and suffering.

3. Towards loss of amenities in life only a sum of Rs. 20,000/- is seen awarded. As we feel inadequacy in the said amount we award to the appellant an additional sum of Rs. 5000/- under that head.

4. It is proved through Ext. A13 and A14 certificate that the appellant was a toddy tapper and he claimed that he was earning a monthly income of Rs. 6000/-. But the learned Tribunal fixed his monthly income at Rs. 1500/-. The accident was in the year 2001. Considering the age of the appellant, his avocation as well as the year in which the accident had occurred, we fix his monthly at Rs. 2500/-. Undoubtedly he might not have been able to do his work as toddy tapper at least for a period of one year. Thus he is entitled to get a sum of Rs. 30,000/- as compensation for loss of earning. As the learned Tribunal has awarded only Rs. 15,000/- under that head we award to the appellant an additional sum of Rs. 15,000/-.

5. As already pointed out the appellant was hospitalised for 50 days. As the accident was in the year 2001 he is entitled to get bystander's expenses at the rate of Rs. 200/- per day. As the learned Tribunal has awarded only a sum of Rs. 3000/- under that head we award to the appellant an additional sum of Rs. 7000/- towards bystander's expenses.

6. Ext.A11 disability certificate which states that the appellant is having a residual disability of 25% was admitted in evidence and the same was proved through PW3 the doctor who issued the same. The learned Tribunal who had occasion to see the appellant fixed residual disability of the appellant at 23%. The correct multiplier applicable to the age group of the appellant is 17 as he was aged 32 years at the time of the accident. When the disability compensation is reworked on the basis of the revised monthly income it will come to Rs. 1,17,300/-. As the learned Tribunal has awarded only Rs. 66,200/- under that head we award to the appellant an additional sum of Rs. 51,100/-. Thus in total the appellant gets a sum of Rs. 78,100/- over and above what has been awarded by the learned Tribunal. This additional amount awarded by us shall carry interest at rate of 7.5% per annum from the date of petition till realisation. It is hereby made clear that the amount awarded shall not carry interest for a period of 114 days which was condoned by us as per order on C.M.Application No. 62 of 2007 dated 3-8-2012.

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