

(2014) 06 KL CK 0125
In the High Court Of Kerala
Case No : MACA. No. 420 of 2014

Reji	Vs	APPELLANT
Raju		RESPONDENT

Date of Decision : 06-06-2014

Acts Referred:

Citation : (2014) 06 KL CK 0125

Hon'ble Judges : Babu Mathew P. Joseph, J

Bench : Single Bench

Advocate : T.C. Suresh Menon and Sri A.R. Nimod, Advocate for the Appellant;
M.A. George for R2, Advocate for the Respondent

Final Decision : Partly Allowed

Judgement

Babu Mathew P. Joseph, J.—The appellant has sustained injuries in a motor accident involving an autorickshaw bearing Reg. No. KL8/A 7530 driven and owned by the first respondent and insured with the second respondent. He has filed a petition claiming Rs. 35,000/- as compensation for the injuries sustained in the motor accident, before the Motor Accidents Claims Tribunal, Thrissur. The learned Tribunal, after considering the matter, found that the accident had occurred due to the rash and negligent driving of the autorickshaw by the first respondent and awarded a total compensation of Rs. 20,000/- (Rs. 19,200/- is rounded off to Rs. 20,000/-) under various heads as follows:

Dissatisfied with the quantum of compensation awarded, the appellant has preferred this appeal.

2. Heard the learned counsel appearing for the appellant and the learned Standing Counsel appearing for the second respondent Insurance Company.

3. Learned counsel for the appellant submits that the amounts awarded by the Tribunal under various heads are insufficient. The appellant has sustained a serious fracture in the accident. He was a head load worker at the time of accident. The accident has caused disability to him and it affects his earning

power. He has undergone much pain and suffering as a result of the injuries suffered in the accident. Therefore, the appellant is entitled to more amounts under various heads as compensation.

4. Learned Standing Counsel for the second respondent submits that the appellant was amply compensated by the Tribunal under various heads. The claims now raised by the learned counsel for the appellant are without supported by any evidence. The appellant has not sustained any disability affecting his earning power. Therefore, he prays for dismissing this appeal.

5. The appellant has sustained comminuted fracture of the base of the 5th metatarsal of his right foot and a lacerated wound, 4x2 cm, on that foot. He was treated at the Medical College Hospital, Thrissur, after the accident. He was treated by applying Plaster of Paris Cast for the comminuted fracture. The appellant was a headload worker at the time of accident. But, in the absence of any income certificate, the learned Tribunal fixed his monthly income notionally at Rs. 3,000/-. On considering the matter, the notional income thus fixed by the Tribunal does not require any interference. The amounts awarded under the heads of loss of earnings, transport to hospital, extra nourishment and damages to clothing also do not require any interference. The appellant has produced bills worth Rs. 1,670/- showing the medical expenses. On considering the nature of injuries suffered by the appellant and the medical bills produced, Rs. 2,500/- is awarded in the place of Rs. 1,700/- awarded by the Tribunal under the head of medical expenses. The Tribunal awarded Rs. 5,000/- as compensation for pain and suffering. This is palpably low. The appellant has sustained comminuted fracture of the base of the 5th metatarsal of his right foot. The nature of fracture so suffered itself indicates that the appellant would have undergone excruciating pain after the accident. Therefore, Rs. 5,000/- awarded under this head is enhanced to Rs. 10,000/-. The Tribunal has awarded Rs. 5,000/- towards compensation for disability and discomfort. On considering the nature of the fracture suffered by the appellant, it is probable that he would have sustained some disability affecting his efficiency and amenities of life justifying more compensation. Therefore, Rs. 5,000/- more is allowed under this head. Thus, the appellant is entitled to Rs. 10,800/-(Rupees ten thousand eight hundred only) as compensation over and above the compensation already awarded by the learned Tribunal. The said amount of Rs. 10,800/- shall carry interest at the rate of 9% per annum from the date of filing of the petition till realisation. The second respondent Insurance Company is directed to deposit the amount within two months from today.

6. Learned counsel for the second respondent submitted that the Tribunal found in the award that the first respondent was not holding a valid driving licence for driving the autorickshaw. Therefore, the second respondent was directed to pay the compensation to the appellant and permitted the second respondent to recover that amount from the first respondent. Therefore, such a permission may be granted to the second respondent for recovering the amount awarded by this

Court in this appeal from the first respondent. This cannot be permitted. The Tribunal has not entered a finding that the absence of driving licence for the driver has contributed to the cause of accident. Moreover, the second respondent has not even made an attempt to prove that the absence of a driving licence for the driver, in fact, has contributed to the cause of accident. Therefore, in this case, in the light of the ruling of the Honourable Supreme Court in National Insurance Co. Ltd. Vs. Swaran Singh and Others, , the second respondent Insurance Company cannot be permitted to recover the amount allowed in this appeal and paid by the second respondent from the first respondent. They are liable to indemnify the first respondent.

This appeal is allowed in part as above.