
(2012) 07 KL CK 0204
In the High Court Of Kerala
Case No : MACA.No. 3083 of 2008 (F)

R.K. Hamsa

APPELLANT

Vs

P.M. Sameer, Raghu Kumar and The New India Assurance
CO.Ltd.

RESPONDENT

Date of Decision : 16-07-2012

Acts Referred:

Citation : (2012) 07 KL CK 0204

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

Bench : Division Bench

Advocate : Bindu George, for the Appellant; P.G. Ganappan Advocate, for the Respondent

Final Decision : Allowed

Judgement

Ramakrishna Pillai, J

1. The appellant, a 50 year old bakeman while waiting for bus in a bus stop on 05/02/04 was hit down by an auto rickshaw driven by the second respondent. Against the claim of Rs. 4 lakhs, the learned Tribunal awarded a sum of Rs. 37,962/- as compensation attributing negligence against the second respondent. As the third respondent admitted the policy of the offending vehicle, they were fastened with the liability of paying the compensation. In this appeal the appellant is challenging the adequacy of the compensation awarded.

2. We have heard the learned counsel for the appellant and the learned counsel for the third respondent Insurance Company. The impugned award was also perused.

3. After the accident the appellant was admitted to District Hospital, Palakkad with abrasion on left cheek, left chest and bleeding from the left ear. Final diagnosis revealed that he had sustained fracture to left temporal bone and fracture to 7th rib on the left side. Subsequently he was treated in Jubilee Mission Hospital. Final diagnosis revealed that there was traumatic LMN (L) and

facial palsy. Follow up treatment was taken from the Christian Medical College, Vellore. Totally he was in patient for ten days. The learned Tribunal has awarded a global sum of Rs. 8,000/- towards pain and suffering and loss of amenities in life during the period of treatment and convalescence. Taking into account the serious nature of injuries sustained by the appellant and the period of hospitalisation and the long continuous treatment, we reckon the amount awarded by the learned Tribunal towards compensation for pain and suffering. But as we feel inadequacy in this amount also, we award an additional sum of Rs. 7,000/- towards compensation for pain and suffering.

4. Undoubtedly the appellant might have been bedridden for a good number of days on account of the injuries sustained by him in the accident. Hence, he has to be adequately compensated for the loss of amenities in life during the period of treatment and convalescence. We award to the appellant a sum of Rs. 10,000/- on that count.

5. According to the appellant, he was earning a monthly income of Rs. 7,000/-. But the learned Tribunal fixed his monthly income at Rs. 2,500/-. The appellant was aged 50 at the time of the accident. Considering the age of the appellant and the year in which the accident had occurred as well as his avocation, we fix the monthly income of the appellant at Rs. 3,000/-. Presumably he might not have been able to go for any work at least for a period of three months. Hence, towards loss of earnings for three months, he is entitled to get Rs. 9,000/- as compensation. As the amount awarded under that head is only Rs. 5,000/- we award an additional sum of Rs. 4,000/- under that head.

6. The accident was in the year 2004. Towards bystander's expenses, the appellant is entitled to get a sum of Rs. 200/- per day. As the amount awarded by the Tribunal is only Rs. 1,500/-, the appellant becomes entitled to get an additional sum of Rs. 500/- under that head and we award the said amount to the appellant.

7. It was submitted by the learned counsel for the appellant that though there is evidence to show that the appellant was treated in a hospital at Vellore no adequate amount has been awarded towards transportation expenses. As we feel inadequacy in the amount awarded by the Tribunal towards Transportation and incidental charges, we award an additional sum of Rs. 3,000/- under that head.

8. The main grievance voiced against the award by the learned counsel for the appellant is that though Ext.A10 certificate which states that the appellant is having a residual disability of 8% was admitted in evidence, the learned Tribunal was not inclined to accept the same and adopted 3% for computing the compensation for permanent disability. The learned counsel for the respondent Insurance Company per contra would submit that Ext.A10 certificate was not properly proved. However, considering the fact that the appellant had facial palsy on account of the head injury sustained by him which was revealed in the final diagnosis, we are of the view that there is justification in adopting 8% as the

residual disability of the appellant. When the disability compensation is re-calculated on the basis of the revised monthly income of Rs. 3,000/- as well as the percentage of disability made mention of in Ext.A10 and adopting the correct multiplier applicable to the age group of the appellant, it will stand enhanced to Rs. 37,440/-. As the learned Tribunal has awarded a sum of Rs. 9,900/- only under that head we award an additional sum of Rs. 27,540/- towards compensation for permanent disability.

9. Thus in total the appellant is entitled to get a sum of Rs. 52,040/- over and above what has been awarded by the learned Tribunal which will carry interest at the same rate specified in the award. The appeal is allowed. The impugned award shall stand modified as above.