
(2012) 02 KL CK 0129
In the High Court Of Kerala
Case No : M.A.C.A. No. 2223 of 2011

Saharath	Vs	APPELLANT
Mini, Ajayan E.P. and National Insurance Company Limited		RESPONDENT

Date of Decision : 08-02-2012

Acts Referred:

Citation : (2012) 02 KL CK 0129

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

Bench : Division Bench

Advocate : Latha Prabhakaran and Sri. K.M. Jamaludheen, for the Appellant; P. Jayasankar, for R3 and Sri. M.A. George, for the Respondent

Final Decision : Allowed

Judgement

A.V. Ramakrishna Pillai, J.—The appellant approached the Tribunal claiming compensation to the tune of Rs. 2,50,000/- for the injuries sustained by him in a road traffic accident occurred on 11/7/2008.

2. Allegedly on 11/7/2008, while the appellant was walking along Chakkumkadave to Payyanakkal road, he was knocked down by a bus driven by the second respondent.

3. The learned Tribunal fixing the primary liability on the second respondent awarded a sum of Rs. 2,05,190/- under various heads and the third respondent Insurance company was directed to pay the amount. The adequacy of compensation is under challenge in this appeal.

4. We have heard the learned counsel for the appellant as well as the learned standing Counsel for the third respondent -Insurance company.

5. The learned Tribunal arrived at the final quantum of Rs. 2,05,190/- under various heads as under:

Head of claim amount awarded to hospital 750/- Details 1 Transport

- 2 Extra nourishment 750/-
- 3 Loss of earnings 6,000/- 3000x2 months
- 4 Damage to clothing 500/-
- 5 Treatment expenses 7730/- 8757 - 1027
- 6 By-stander's expenses 2100/- 100 x 21 days
- 7 pain and sufferings 13,000/-
- 8 Permanent disability 1,71,360/- 3000x12x28x17/100
- Loss of amenities 3,000/-

9

Total 2,05,190/- 7% interest from 29/6/09 onwards.

6. The argument advanced by the learned counsel for the appellant is that though the appellant was a coolie and his monthly income was claimed to be Rs. 4,500/-, the Learned Tribunal fixed the monthly income of the appellant at Rs. 3,000/-. According to us, the monthly income adopted by the learned Tribunal is quite reasonable. It was further argued that though the appellant was hospitalized for a period of 61 days in two spells, the learned Tribunal has awarded by-stander's expenses for only 21 days at the rate of Rs. 100/-. We note that the accident was of the year 2008. Hence, by-stander's expenses at the rate of Rs. 200/- per day could have been awarded as the appellant was hospitalized for about 61 days. Thus we find that the appellant is entitled to an additional sum of Rs. 9100/- towards by-stander's expenses. The learned Tribunal has awarded loss of earning for two months only. Ext.A2 wound certificate shows that the appellant sustained a lacerated wound 10x2x2x1 cm on the left heel with heel pad avulsion of left leg. Considering the nature of injuries, we are of the view that the appellant should have been awarded loss of earning for six months at the rate of Rs. 3,000/- per month. Hence, we find that the appellant is entitled to an additional sum of Rs. 12,000/- on that count. Towards pain and suffering, the learned Tribunal has awarded a sum of Rs. 13,000/-, which according to the appellant is low. We find force in the argument and we are awarding an additional sum of Rs. 7,000/- towards pain and suffering. Towards loss of amenities Rs. 3,000/- only was awarded. That also is under challenge. Considering the gravity of injury, we are of the view that the appellant might have been compelled to take rest for a number of days. Hence, we are awarding an additional sum of Rs. 7,000/- towards compensation for loss of amenities for the period during which the appellant was hospitalized and was compelled to take rest. So, the appellant is entitled to an additional amount of Rs. 35,100/-(Rupees thirty five thousand one hundred only) as compensation.

7. The appeal is allowed and the award shall stand modified as above.

8. The additional amount will carry interest at the rates specified by the Tribunal

in the impugned award.