

(2013) 09 KL CK 0044
In the High Court Of Kerala
Case No : MACA No. 2342 of 2007

Sajith Sedhumadhavan

APPELLANT

Vs

Venugopalan T.S., C.R. Pushkaran and The Oriental Insurance
Company Limited

RESPONDENT

Date of Decision : 25-09-2013

Acts Referred:

Citation : (2013) 09 KL CK 0044

Hon'ble Judges : S. Siri Jagan, J;K. Ramakrishnan, J

Bench : Division Bench

Advocate : K.B. Arunkumar, for the Appellant; G. Sreekumar (Chelur), for R1
and Sri. George Cherian (Thiruvalla), for R3, for the Respondent

Final Decision : Disposed Off

Judgement

K. Ramakrishnan, J.—The petitioner in O.P. (MV) No. 1223/2005 on the file of the Motor Accidents Claims Tribunal, Ottapalam, is the appellant herein. He was a minor aged 16 at the time of the accident and he filed the application through his mother as guardian, claiming compensation for the injuries and consequential disability sustained by him in a motor vehicle accident caused on account of the negligent driving of a vehicle by the 1st respondent, owned by the 2nd respondent and insured with the 3rd respondent. After considering the evidence on record, the Tribunal found that the accident occurred due to the negligent driving of the vehicle by the 1st respondent and awarded a total compensation of Rs. 70,712/- on various heads as follows:

Medical expenses

Rs. 37,712/-

Travelling expenses

Rs. 1,500/-

By standers expenses

Rs. 1,500/-

Extra nourishment

Rs. 1,500/-

Damage to clothes

Rs. 500/-

For disability

Rs. 18,000/-

Pain and suffering

Rs. 10,000/-

Total

Rs, 70,712/-

Dissatisfied with the quantum of compensation awarded by the Tribunal, the appellant has filed this appeal before this court.

Heard counsel for the appellant and counsel for the Insurance Company.

2. Counsel for the appellant submitted that the appellant sustained severe injuries and sustained 8% disability, but, no amount was awarded under the head "loss of amenities in life." Further, in view of the decision in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, the multiplier to be applied is 18, but the Tribunal has taken only 15 as multiplier, which is not correct. Further, he had produced some documents before this Court, which will go to show that he spent some amount for future treatment as well and no provision was made in the award to get that amount. The amount awarded under the head "pain and suffering" is also on the lower side. According to the learned counsel, the appellant is entitled to enhancement of compensation on all heads.

3. On the other hand, the Insurance Company submitted that the Tribunal has awarded just and reasonable compensation and no interference is called for at the hands of this Court.

4. We have considered the contentions of both parties in detail.

5. The fact that the appellant was a minor aged 16 years at the time of the accident is not in dispute. He sustained the following injuries:

Type I open fracture distal 1/3 shaft of femur (L) and lacerated wound (L) knee with open knee.

He was treated as in-patient for 10 days. Further, the disability certificate issued by the doctor will go to show that he had suffered 8% permanent disability. The Tribunal has accepted 8% as disability as well. Since he was a student at the

time of accident, the Tribunal has rightly taken the notional income fixed for a non-earning member for the purpose of assessing compensation under the head "loss of earning capacity." But, the Tribunal has taken only 15 as the multiplier. As per the decision in Sarla Verma's case (supra), the proper multiplier to be adopted for the age group of 16 is 18 and not 15. If the multiplier is taken as 18, the appellant would be entitled to get Rs. 21,600/- as compensation under the head loss of earning power instead of Rs. 18,000/- awarded by the Tribunal and we award the same under that head ($15,000 \times 18 \times 8\%$).

The appellant sustained severe injuries. Considering the fact that he was aged 16 years, he may have suffered severe pain. So, we enhance the amount awarded under the head "pain and suffering" to Rs. 20,000/- from Rs. 10,000/- awarded by the Tribunal. No amount was awarded under the head "loss of amenities in life". Considering the fact that he suffered 8% permanent disability, he will have to be with this difficulty for the remaining period of his life. We feel that an amount of Rs. 15,000/- can be awarded under the head "loss of amenities in life", and we do so. The appellant had produced some documents along with I.A. No. 2545/2013 to prove future expenses for treatment. No corresponding documents have been produced to prove that these amounts were incurred for that purpose. However, the evidence given by the doctor will go to show that he will require some treatment in future as well. Considering this fact, we award an amount of Rs. 9,000/- under the head "future treatment." We are not inclined to enhance any amount under other heads as the amount awarded is just and reasonable.

In all, the appellant will be entitled to an additional compensation of Rs. 37,600/- over and above what has been awarded by the Tribunal, which the 3rd respondent Insurance Company shall deposit with 9% interest per annum from the date of the petition till the date of payment, within two months.

With the above modification of the award of the Tribunal, this appeal is disposed of.