
(2013) 09 KL CK 0054
In the High Court Of Kerala
Case No : MACA No. 1411 of 2007

Shaji M.

APPELLANT

Vs

Sirajudheen, Sundaran C. and National Insurance Co. Ltd.

RESPONDENT

Date of Decision : 24-09-2013

Acts Referred:

Citation : (2013) 09 KL CK 0054

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

Bench : Division Bench

Advocate : A.R. Gangadas, for the Appellant; George Cherian (Thiruvalla), for R3, for the Respondent

Final Decision : Disposed Off

Judgement

S. Siri Jagan, J.—The appellant is the claimant in O.P. (M.V.) No. 344/2001 before the Motor Accidents Claims Tribunal, Palakkad. He suffered injuries and consequential disabilities in an accident caused by the negligent driving of a vehicle, owned by the first respondent, driven by the 2nd respondent and insured with the 3rd respondent. He filed the O.P., claiming compensation for the injuries and consequential disabilities suffered by him in the accident. The tribunal, after finding negligence on the part of the 2nd respondent driver of the vehicle, awarded compensation under various heads as follows:

Sl. No.

Head of claim

Amount

awarded

1.

Transportation

1400

2.

Attendants charges

1200

3.

Extra nourishment

400

4.

Damage to clothing

400

5.

Treatment expenses

800

6.

Loss of earnings

1500

7.

Pain and sufferings

7000

8.

Discomforts and inconvenience

3000

Total

15700

rounded to

15750

Dissatisfied with the quantum of compensation awarded by the tribunal, the appellant has filed this appeal, seeking enhanced compensation.

The first contention of the appellant is that, although the appellant was a coolie by profession and the accident was on 09.09.2000, the tribunal fixed only a notional monthly income of 1,500/-, which is on the lower side. The 2nd

contention is that the appellant suffered injuries to his eye and the compensation awarded for pain and suffering of 7,000/- is not commensurate with the sufferings of the appellant. Thirdly, it is contended that, although, the tribunal referred the appellant to the Medical Board to determine his disability and the Medical Board forwarded Ext. X1 Medical certificate certifying 30% permanent disability, the tribunal did not award any amount for loss of earning capacity, merely on the ground that, the Medical Board had sent certificate directly to the tribunal and none of the members of the Board was examined to prove the certificate. Lastly it is contended that, the tribunal awarded only 3,000/- towards loss of amenities in life, which is on the lower side, considering the fact that appellant has completely lost use of his one eye.

2. We have heard the learned counsel for the insurance company as well, who argue for substantiating the award.

3. We have considered the rival contentions in detail. In 2000, a coolie can be expected to have been earning at least 2,000/- per month. Therefore, we fix the monthly income of the appellant as 2,000/-. We do not find any justification for the reasoning in rejecting Ext. X1 medical certificate by the tribunal. The Medical certificate was forwarded by the Medical Board, as per an order of the tribunal, referring the appellant for examination by the Medical Board. Merely because of the fact that, the Medical Board directly forwarded the certificate to the tribunal and the appellant has not examined a member of the Medical Board to prove the same, the same cannot be rejected, especially when the tribunal has marked the same in evidence as court Ext. X1. Ext. X1 certificate certified 30% disability. Having lost the eye sight of his one eye, we are of opinion that his earning capacity would also be correspondingly reduced, insofar as, he is a coolie. Therefore, we are inclined to award compensation for loss of earning capacity taking the disability as 30% itself. The appellant was 21 years old at the time of the accident. The multiplier to be adopted based on that age is 18 as per the decision of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, Calculated on that basis, the appellant would be entitled to compensation for loss of earning capacity amounting to 1,29,600/- ($2,000 \times 12 \times 18 \times 30\%$). Because of his disability, the appellant's day to day life would be seriously affected. Therefore, we are of opinion that the appellant is entitled to 30,000/- towards loss of amenities in life, as against 3,000/- awarded by the tribunal. We are also inclined to enhance the compensation for pain and suffering to 20,000/- from 7,000/-. We are not inclined to interfere with the compensation fixed under other heads. Consequentially, over and above what has been awarded by the tribunal, the appellant would be entitled to additional compensation of 1,69,600/-, that amount would carry interest at the rate of 9% per annum from the date of the claim petition, till date of payment. The 3rd respondent insurance company is directed to deposit that amount also within two months.

With the above modification of the impugned award of the tribunal, the appeal is

disposed of.