**(2024) 11 KL CK 0026**

**In the High Court Of Kerala**

**Case No :** MACA No.1591 Of 2018

Sheeja APPELLANT

Vs

United India Insurance Company RESPONDENT

**Date of Decision :** 12-11-2024

**Acts Referred:**

**Citation :** (2024) 11 KL CK 0026

**Hon'ble Judges :** Johnson John, J

**Bench :** Single Bench

**Advocate :** Mathew John, Mathew Devassi, Rekha Nair

**Final Decision :** Allowed

## Judgement

Johnson John, J

1. The appellant is the petitioner in OP(MV) No.176/2016 on the files of the Motor Accident Claims Tribunal, Pala.

2. The said claim petition was filed by him seeking compensation for the injuries sustained in a motor accident that occurred on 15.11.2015.

3. According to the appellant on 15.11.2015 at 6.30 p.m, while he was standing on the side of the public road an autorikshaw bearing registration No.KL-34-D 2948 driven by the 1st respondent in a rash and negligent manner hit him resulting in serious injuries.

4. The owner-cum-driver of the offending autorikshaw was arrayed as the 1st respondent in the original claim petition, whereas the insurer of the said vehicle was arrayed as the 2nd respondent.

5. The 2nd respondent insurer resisted the claim by filing a written statement, primarily contesting the quantum of compensation claimed despite admitting the insurance coverage for the vehicle.

6. The evidence in this case consists of Exts.A1 to A7 from the side of the

 

claimant. The 2nd respondent produced no evidence.

7. After trial, the tribunal came to the conclusion that the accident occurred due to the negligence on the part of the driver of the autorikshaw bearing registration No.KL-34-D-2948 and being the insurer, the 2nd respondent was held liable to pay the compensation. The quantum of compensation was fixed as Rs.58,466/- with interest at the rate of 9% per annum from the date of petition till realisation with proportionate costs. This appeal is filed seeking enhancement of the said compensation.

8. Heard Sri. Mathew John, the learned counsel appearing for the appellant and Smt. Rekha Nair, the learned counsel appearing for the 2nd respondent, insurance company.

9. The only dispute in this case relates to quantum of compensation. The main contention raised by the counsel for the appellant is that the compensation awarded by the tribunal under various heads is grossly inadequate. A perusal of records reveals that the said contention has some merit.

10. For the purpose of determining compensation, under the head of loss of earnings, the tribunal assessed the monthly income of the petitioner at Rs.8,500/- whereas, the petitioner claimed Rs.10,000/-. It is true that no evidence, whatsoever, is seen produced from the side of the petitioner to show his actual occupation and income at the time of the accident. However, considering the fact that the accident occurred in the year 2015, the tribunal, following the principles laid down in Ramachandrappa v. Manager, Royal Sundaram Alliance Insurance Co.Ltd [(2011) 13 SCC 236] ought to have assessed the petitioner's monthly income at Rs.10,000/- notionally.

11. The medical evidence reveals that the petitioner sustained the following injuries in the accident.

1. Fracture D2 vertibra

2. Contusion back 5x3 cm

3. pain and abrasion all over the body.

12. It can also be seen from the records that the injured underwent inpatient treatment for six days. Considering the nature of injuries the tribunal entered into a finding that the petitioner might have been prevented from procuring earnings for three months. However in my view the petitioner's injuries justify a minimum five months loss of earnings. The petitioner is thus entitled to get an amount of Rs.50,000/-(Rupees fifty thousand only) (10000x5) as compensation under the head of loss of earnings. After deducting the amount already awarded by the Tribunal, the petitioner is thus entitled to an amount of Rs. 24,500/-(Rupees twenty four thousand and five hundred only) as additional compensation under the said head.

13. Similarly, the tribunal failed to award any amount as compensation under the

 

head of loss amenities. Considering the severity of the injuries and duration of inpatient treatment undergone by the petitioner, I firmly believe that a suitable amount should have been allowed under the aforementioned head as compensation. I am of the considered view that a sum of Rs.25,000/- (Rupees twenty five thousand only) can be awarded under the said head.

14. Under the head of pain and sufferings already an amount of Rs.27,500/- is seen awarded by the tribunal. Considering the fact that the petitioner suffered injuries including fracture and the nature of the treatment undergone by him, I deem it appropriate to allow a further sum of Rs.7,500/- under the said head, as compensation.

15. The compensation awarded by the tribunal under the other heads appears to be reasonable and warrants no interference. Thus the total additional compensation receivable by the appellant would come to Rs.57,000/- (24,500+25,000+7,500) (Rupees fifty seven thousand only).

In the light of the abovesaid observations and findings, this appeal is allowed. The award dated 02.02.2018 passed by the Motor Accident Claims Tribunal, Pala in OP(MV) No.176/2016 is hereby modified by granting an additional compensation of Rs.57,000/- (Rupees fifty seven thousand only). The 2nd respondent, insurance company, is directed to deposit the said amount along with interest, at the rate as ordered by the tribunal, from the date of petition till realisation with proportionate costs. The said amount shall be deposited within a period of three months from the date of receipt of copy of this judgment.

 