

(2013) 10 KL CK 0086

In the High Court Of Kerala

Case No : M.A.C.A. No. 2342 of 2010 (C) (Against the award in OPMV 834/2008 of M.A.C.T. TIRUR, DATED 22-07-2010)

Sherfuddin

APPELLANT

Vs

Saveesh. K.

RESPONDENT

Date of Decision : 09-10-2013

Acts Referred:

Citation : (2014) 1 KHC 242

Hon'ble Judges : Mr. S. Siri Jagan and Mr. K. Ramakrishnan, JJ.

Bench : Division Bench

Advocate : Smt. Raji T. Bhaskar, Advocate, for the Respondent No. 2; Sri. P.V. Chandra Mohan, Advocate, for the Appellant/Petitioner

Final Decision : Disposed Off

Judgement

Mr. K. Ramakrishnan, J. - The claimant in O.P.(MV) No. 834/2008 on the file of the Motor Accidents Claims Tribunal, Tirur, is the appellant herein. He filed the application for compensation for the injuries and consequential disability sustained by him in a motor vehicle accident caused on account of the rash and negligent driving of the vehicle by the 1st respondent, who is the owner also, and insured with the 2nd respondent. After considering the evidence on record, the Tribunal found that the accident occurred due to the rash and negligent driving of the vehicle by the 1st respondent, and awarded a total compensation of Rs. 3,42,400/- under the following heads:

Loss of earning Rs. 55,000/-

Medical and miscellaneous expenses Rs. 82,641/-

Bystander expenses Rs. 9,450/-

Transportation expenses Rs. 10,000/-

Extra nourishment Rs. 6,000/-

Damage to clothing etc. Rs. 300/-

Pain and suffering Rs. 25,000/-

Compensation towards permanent partial disability Rs. 1,44,000/-

Loss of amenities and conveniences etc. Rs. 5000/-

Compensation for disfigurement Rs. 5,000/-

Total 3,42,391/-

Round off to Rs. 3,42,400/-

Dissatisfied with the quantum of compensation awarded by the Tribunal, the appellant has come to this Court with the above appeal.

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

3. Counsel for the appellant submitted that the appellant was working as a driver-cum-salesman in a shop in Qatar at the time of accident and he was getting a monthly income of Rs. 28,000/- and he had produced evidence to prove this fact as well. Further, while he was in Qatar, he had sent Rs. 58,103/- within a span of 7 months, which will go to show that he was sending at least Rs.8,300/- per month out of his income and that will go to show that he will be getting more than that amount as income. This fact was not considered properly by the Tribunal for fixing his monthly income and the Tribunal has arbitrarily fixed the income as Rs. 5,000/-. Further, after the accident, he could not get the same employment and so that has affected his earning capacity considerably. The amount awarded under the head "loss of earning capacity" is also on the lower side. He had suffered 15% permanent partial disability and he will have to undergo further treatment, for which no amount was granted under the head "future treatment". The amounts awarded under the heads "pain and suffering" and "loss of amenities in life" are also on the lower side. So according to him, the appellant is entitled to enhancement on all heads.

4. On the other hand, counsel for Insurance Company submitted that the income of the appellant was not proved by examining the employer. The employment in Gulf countries is not permanent in nature and it will have its own uncertainties. So, under the circumstances, the Tribunal was perfectly justified in fixing monthly income of Rs.5,000/- for the purpose of assessing compensation. The Tribunal has considered all the aspects correctly and awarded just compensation and no interference is called for at the hands of this Court.

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

6. The case of the appellant was that he was aged 29 years and was a driver-cum-salesman of food articles and working in Qatar and getting Rs. 28,000/- per month at the time of accident. He had produced Ext. A15 driving licence and Exts. A10 and A10(a) passport to prove that he was employed in Qatar. But, he had not produced any document to prove that he was getting Rs. 28,000/- per

month at that time. Though, in the petition, he had mentioned his income as Rs. 28,000/- per mensem, when he was examined as PW1, his case was that his income was Rs.60,000/- per month. Therefore, he had no consistent case regarding his income. It is true that he had produced his passbook to show that he had sent Rs. 58,103/- during a span of 7 months. But, that alone is not sufficient to come to the conclusion that he was getting a stable income in a foreign country. It was not a permanent income and it has got its own uncertainties. In such circumstances, the income alleged to have been earned by a person in a foreign country cannot be taken as such for the purpose of assessing his monthly income. We have to consider the standards in India as to what would have been the probable income that such a person will earn if he was employed here. So, under the circumstances, the monthly income of Rs. 5,000/- fixed by the Tribunal is just and proper and we are not inclined to enhance the same.

7. The Tribunal has awarded Rs. 55,000/- under the head "loss of earnings" during the period of treatment. Even according to the appellant, he went abroad after one year. So, he is not entitled to get any enhancement under that head. The documents produced by the appellant show that he was treated as in-patient for 63 days on various occasions and underwent 9 surgeries. So, he might have suffered severe pain on account of the injuries sustained by him. He had also lost skin on account of the injury caused to his foot and caused disfigurement as well, which still persists even after the prolonged treatment. The medical board assessed his disability as 15% permanent partial disability. He will have to be with this difficulty for the remaining period also. It will have some impact on his personal life as well. So, considering these aspects, the amount awarded under the head "pain and suffering and loss of amenities in life", appears to be on the lower side and we enhance the same to Rs. 40,000/- and Rs. 50,000/- respectively. The Tribunal has taken 15% disability and adopted a correct multiplier for assessing compensation under the head "loss of earning power." We are not inclined to enhance any amount under the other heads.

8. In all, the appellant will be entitled to an additional amount of Rs. 55,000/- over and above what has been awarded by the Tribunal, which the 2nd respondent Insurance Company is directed to deposit with 9% interest per annum from the date of the petition till date of payment, within two months.

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