

(2012) 07 KL CK 0221

In the High Court Of Kerala

Case No : MACA. No. 670 of 2006

Shinu Thomas Represented By Guardian Thomas,
Puthenpurakkal Ambalakkadavu, Thottackadu, Kottayam

APPELLANT

Vs

Mariamamma Joseph and National Insurance Co. Ltd.

RESPONDENT

Date of Decision : 23-07-2012

Acts Referred:

Citation : (2012) 07 KL CK 0221

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

Bench : Division Bench

Advocate : T.K. Koshy and Sri. P.K. Sivadasan Nair, for the Appellant; E.M. Joseph (R2), for the Respondent

Final Decision : Allowed

Judgement

Ramakrishna Pillai, J.—The appellant a 13 year student while standing in a bus stand was hit down by a bus on 7/7/1999 as a result of which she sustained a blunt injury to her abdomen and fracture to the medial cuneiform which made her hospitalized for about 40 days. Attributing negligence against the driver of the bus, the learned Tribunal awarded a sum of Rs. 47500/- as compensation against the claim of Rs. 2,25,000/- and saddled the 2nd respondent with the liability of paying the compensation. In this appeal the appellant is challenging the adequacy of the compensation awarded to her. We have heard the learned counsel for the appellant and the learned standing counsel for the 2nd respondent Insurance Company. The impugned award was also perused.

2. During the course of the argument, the learned counsel for the appellant made available to us a copy of Ext.P4 discharge card issued by the Medical College Hospital, Kottayam. It would reveal that the appellant, who had sustained a very serious blunt injury to her abdomen, was subjected to laparotomy and split skin grafting. As already pointed out, the appellant was hospitalised for 40 days. The learned Tribunal has awarded a sum of Rs. 12,000/- only as compensation for pain and suffering. As we feel inadequacy in the

amount awarded by the learned Tribunal under that head, we are awarding a sum of Rs. 13,000/- more towards pain and suffering.

3. Towards loss of amenities in life during the period of treatment and convalescence no amount is seen awarded. Undoubtedly, on account of the injuries sustained by the appellant she might have been bed ridden for a good number of days. She has to be adequately compensated for the same and thus we award to her Rs. 15000/- under that head.

4. As the accident was in the year 1999, the appellant is entitled to get by stander's expenses at the rate of Rs. 150/- per day. That means the appellant, who was hospitalized for 40 days, is entitled to get a sum of Rs. 6,000/- under that head. As the amount awarded towards by stander's expenses is only Rs. 1,500/-, she gets an additional amount of Rs. 4,500/- under that head.

5. As we feel inadequacy in the amount awarded by the learned Tribunal towards transportation expenses, we are awarding a additional sum of Rs. 1500/- under that head.

6. The learned Tribunal has awarded a sum of Rs. 25,000/- towards permanent disability on a rough and ready estimate. The learned counsel for the Insurance Company would submit that the appellant is not entitled to get any further amount under that head as there is nothing on evidence to show that she is suffering from any permanent disability. But, going through the award we notice that the learned Tribunal, who had occasion to see the appellant, noticed the visible scar of injuries sustained by the appellant and it was found by the Tribunal that the injuries suffered by the appellant would possibly affect her future life. The learned counsel for the appellant would submit that due to visible scar of the injuries, the appellant remained unmarried even after attainment of majority. Considering all relevant circumstances, we are awarding an additional sum of Rs. 25000/- towards permanent disability, dis-figuration as well as for loss of marriage prospects.

7. It was submitted by the learned counsel for the appellant that the appellant lost studies for one year on account of the injuries sustained by her and the consequential treatment. We notice that the accident was in the month of July 1999. Undoubtedly on account of the treatment and consequential rest, she might not have been able to go to the school for few months. Hence, we accept the submission of the learned counsel for the appellant that the appellant had lost one academic year. Hence, we are of the view that she has to be awarded a sum on that count also. Thus, we are awarding a sum of Rs. 15,000/- to the appellant for the loss of academic year.

8. Thus in total, the appellant becomes entitled to get an additional sum of Rs. 74,000/-(13000+15000+4500+ 1500 +25000+ 15000) over and above what has been awarded by the learned Tribunal. This additional amount will carry interest at MACA No. 670/2006 5 the rate of 7.5% from the date of the award till the date of realisation. It is made clear that the amount awarded by us shall not

carry any interest during the period of 530 days condoned by us as per order dated 20/3/2012 in C.M.Appln. No. 797/2006.

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