(2012) 07 KL CK 0143

In the High Court Of Kerala

Case No : MACA. No. 1624 of 2008

Sudheer.E.K	APPELLANT
Vs	
Nazar, Nihas and The Cholamandalam General Insurance Co. Ltd., 2nd Floor, Acel Estate, Chitoor Road, Kochi-11	RESPONDENT

Date of Decision : 20-07-2012

Acts Referred:

Citation : (2012) 07 KL CK 0143

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

Bench : Division Bench

Advocate : P.V. Baby, for the Appellant; G. Balamuraleedharan (Paravur), Sri. Mathews V. Jacob (Paravur) and Sri. N.T. Nandakumar (Paravur) for R1 and R2 Advs., Sri. Mathews Jacob for R3 and Advocate Sri. P. Jacob Mathew, for the Respondent

Judgement

Ramakrishna Pillai, J.—The appellant, a 26 year old Goldsmith who sustained a fracture to his vertibral column resulting in paraplegia while travelling by a goods vehicle driven by the second respondent on 22-9-2005 claimed a sum of Rs. 28 lakhs as compensation against which the learned Tribunal awarded a sum of Rs. 6,98,100/- together with interest at the rate of 7% per annum. Allegedly he was taking his motorcycle for repair in the offending vehicle driven by the second respondent which, enroute collided with another autorickshaw coming from the opposite direction. The second respondent was found negligent and the third Insurance Company was directed to pay compensation as they admitted the policy of the offending vehicle. In this appeal the appellant is challenging the adequacy of compensation awarded. We have heard the learned counsel for the appellant and the learned standing counsel for the third respondent Insurance Company. The impugned award was also perused.

2. It is in evidence that the appellant had sustained fracture to spine with dislocation of T11 and T12 vertebra. C.T. Scan revealed that there was comminuted fracture of D12 vertebra with posterior and right lateral

displacement occuluding the spinal canal. This resulted in paraplegia.

3. We notice that reasonable amount of compensation has been awarded by the learned Tribunal under the head pain and suffering, transport to hospital etc. However, we notice that no amount was awarded towards loss of amenities in life during the period of treatment and convalescence. Undoubtedly the appellant might have been bed ridden for a good number of days and he has to be compensated for the same. Thus we are awarding a sum of Rs. 10,000/- under that head.

4. It was assessed that the appellant was having a residual disability of 100%. The learned Tribunal after awarding compensation for residual disability did not award any sum for compensation for loss of earning as both heads overlapped on account of adoption of 100% disability. However, we feel justification in awarding three months of loss of earning as the appellant might not have been able to go for any work during that period. Though it was claimed that the appellant was earning a monthly income of Rs. 8000/- the learned Tribunal fixed his monthly income at Rs. 3000/- which appears to be reasonable. Towards loss of earning for three months we award to the appellant Rs. 9000/-. The main grievance voiced against the award is regarding the amount of compensation awarded for loss of earning capacity (for residual disability). Ext.A8 disability certificate was relied on by the Tribunal for arriving at the conclusion that the appellant is having a residual disability of 100%. However, the learned Tribunal after quantifying the amount deducted one-third of the amount in consideration of the personal expenses of the appellant which according to us is not proper. As it was a case of personal injury the learned Tribunal was not justified in deducting one-third of the amount arrived at. When the disability compensation is calculated on the basis of the monthly income as well as the percentage of disability adopted by the Tribunal it will come to Rs. 6,12,000/-. As the amount awarded by the Tribunal is only Rs. 4,08,000/- the appellant will get an additional sum of Rs. 2,04,000/- towards permanent disability. Thus in total the appellant gets an additional sum of Rs. 2,23,000/- over and above what has been awarded by the Tribunal, which will carry the same rate of interest specified in the impugned award.

Appeal is allowed and the impugned award shall stand modified as above.

