

(2013) 12 KL CK 0042
In the High Court Of Kerala
Case No : M.A.C.A. No. 1774 of 2011

Sujesh V.

APPELLANT

Vs

M/s. K.K. Menon Motor Service and Others

RESPONDENT

Date of Decision : 04-12-2013

Acts Referred:

Citation : (2014) 141 FLR 350 : (2014) 1 KHC 92 : (2014) 1 KLJ 384 : (2014) 1 KLT 189

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

Bench : Division Bench

Advocate : P.V. Chandra Mohan, for the Appellant; M.A. George, for the Respondent

Final Decision : Disposed Off

Judgement

S. Siri Jagan, J.—The claimant filed OP (MV) No. 2597/2004 before the Motor Accidents Claims Tribunal, Thrissur, u/s 163A of the Motor Vehicles Act, claiming compensation for the injuries and consequent disability suffered by him in an accident caused by the negligent driving of a vehicle owned and driven by respondents 1 and 3 and insured with the 2nd respondent. The Tribunal, after finding negligence on the part of the driver of the vehicle, awarded compensation under various heads as follows:

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

The first contention raised by the appellant is that the income fixed by the Tribunal is on the lower side. The accident was on 21/01/2004. The appellant claimed to be a student doing some work as a salesman in a private company. He was 19 years old at the time of the accident. He claimed that his income was Rs. 2,000/- per month. The Tribunal adopted a notional income of Rs. 1,500/- per month. According to the appellant, it is on the lower side. The appellant further submits that the appellant produced a disability certificate certifying 8%

disability. But the Tribunal arbitrarily took only 3% disability for the purpose of calculating loss of earning capacity, notwithstanding the fact that the doctor, who issued the certificate, had been examined as PW 1 and he gave evidence in support of the certificate. According to the appellant, the Tribunal should have taken the entire 8% for the purpose of calculating loss of earning capacity. It is submitted that after having fixed the income of the appellant as Rs. 1,500/-, which should have been Rs. 2,000/-, the Tribunal ought to have awarded compensation for loss of earnings as well. He submits that considering the injuries suffered by the appellant, the compensation for pain and sufferings is also on the lower side. He claims compensation under other heads as well, like "by-slander's expenses", "transportation expenses", "extra nourishment", "future treatment", "loss of amenities" etc.

2. The learned counsel for the insurance company submits that the compensation to be awarded u/s 163A has to be strictly in accordance with the 2nd Schedule to the Motor Vehicles Act and the appellant is not entitled to claim anything more than that. It is contended that in view of the fact that there is no evidence to prove either the avocation or income of the appellant, only the notional income fixed in the 2nd Schedule should have been adopted by the Tribunal, which is only Rs. 1,250/-, whereas the Tribunal has adopted Rs. 1,500/-, which itself is on the higher side. It is also submitted that apart from the compensation under the heads mentioned in the 2nd Schedule, no other compensation is award able to the appellant. It is pointed out that specific amounts have been fixed for pain and suffering, medical expenses etc., maximum of which, has been awarded by the Tribunal and, therefore, the appellant is not entitled to any enhancement. It is also pointed out that in the 2nd Schedule, the proper multiplier for persons upto the age of 20 years is only 16, whereas the Tribunal has adopted 17, which is wrong. It is further submitted that the appellant has not suffered any permanent disability as defined u/s 142 and, therefore, the appellant is not entitled to any compensation u/s 163A insofar as, only if permanent disability has been suffered, Section 163A can be applied.

3. We have considered the rival contentions in detail.

4. Section 163A(1) of the Motor Vehicles Act reads thus:

163A. Special provisions as to payment of compensation on structured formula basis.-- (1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle of the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

Explanation.-- For the purpose of this sub-section, "permanent disability" shall have the same meaning and extent as in the Workmen's Compensation Act, 1923 (8 of 1923).

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Going by Section 163A, for the purpose of ascertaining "permanent disability" stated in that Section, we have to necessarily rely on the Workmen's Compensation Act, 1923 in view of the explanation to sub-section 1 of Section 163A. Of course, there is a slight difference in the wordings used in the Workmen's Compensation Act and in Section 163A. In Workmen's Compensation Act, what is considered is permanent disablement, whereas in the explanation to Section 163A(1), the words used are "permanent disability". We are of opinion that nothing much need be read into this difference in language, insofar as in Section 163A(1) itself, the word used is "permanent disablement". Therefore, the two expressions have to be considered interchangeably for the purpose of this Section. "Partial disablement" is defined in Section 2(g) of the Workmen's Compensation Act, thus:

2. Definitions.-- XXXX XXXX XXXX

XXXX XXXX XXXX

(g) "partial disablement" means, where the disablement is of a temporary nature, such disablement as reduces the earning capacity of a workmen in any employment in which he was engaged at the time of the accident resulting in the disablement, and, where the disablement is of a permanent nature, such disablement as reduces his earning capacity in every employment which he was capable of undertaking at that time: provided that every injury specified in Part II of Schedule I shall be deemed to result in permanent partial disablement.

Section 4(1)(c)(ii) the Workmen's Compensation Act provides that in the case of an injury not specified in Schedule I, such percentage of the compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity, as assessed by the qualified medical practitioner permanently caused by the injury is the relevant factor to be taken into account while calculating compensation. In this case, the appellant had produced Ext. A1 disability certificate wherein a qualified medical practitioner assessed the disability as 8%. That certificate was proved by PW 1 doctor, who issued the same. Therefore, going by the explanation to sub-section 1 of Section 163A, read with the Workmen's Compensation Act, the compensation as applicable to that permanent disability has to be awarded to the appellant.

5. The contention of the insurance company on the basis of the definition of "permanent disablement" in Section 142 of the Motor Vehicles Act does not appeal to us. The said Section reads thus:

142. Permanent disablement.-- For the purposes of this Chapter, permanent disablement of a person shall be deemed to have resulted from an accident of the nature referred to in sub-section (1) of Section 140 if such person has suffered by reason of the accident, any injury or injuries involving--

(a) permanent privation of the sight of either eye or the hearing of either ear, or

privation of any member or joint; or

(b) destruction or permanent impairing of the powers of any member or joint; or

(c) permanent disfiguration of the head or face.

That definition itself makes it clear that the same is applicable only to Chapter X of the Act relating to liability to pay compensation without fault as provided u/s 140. Section 163A falls in Chapter XI and that section specifically explains that the words, "permanent disability" occurring in that section shall have the same meaning as in the Workmen's Compensation Act. When Legislature has consciously limited the operation of the definition of "permanent disablement" only to compensation u/s 140 falling in Chapter X, the same cannot be applied to decide the liability u/s 163A, for which a separate meaning is assigned to the words, "permanent disablement" by reference to the meaning assigned to that expression in the Workmen's Compensation Act. Therefore, we do not find any merit in the contention of the insurance company with reference to Section 142 of the Motor Vehicles Act.

The appellant claimed that he was earning Rs. 2,000/- per month. But admittedly he was a XIIth Standard student. His claim was that he was working also as a part time salesman in MRF Tyre showroom in Thriprayar. But no evidence has been adduced in support of the same. As such, the Tribunal could have only fixed a notional income as provided in the 2nd Schedule to the Motor Vehicles Act. But in this connection, it must be remembered that the notional income of Rs. 15,000/- per annum was fixed by the Parliament in the year 1994 and the accident in this case was on 21/01/2004. Commensurate with the passage of time and the diminution in the value of rupee as well as the change in the standards of living, appropriate enhancement has to be given for notional income as well. Therefore, we are inclined to fix the notional income of the appellant as Rs. 2,000/- itself. But as rightly pointed out by the learned counsel for the insurance company, as per the 2nd Schedule to the Motor Vehicles Act, the multiplier fixed for persons above 15 years and not exceeding 20 years is 16 and not 17. Therefore, the compensation for loss of earning power has to be based on the multiplier of 16 only. If the compensation is re-calculated thus, the appellant would be entitled to Rs. 30,720/- (Rs. 2000 x 12 x 16 x 8%) instead of Rs. 9,180/- fixed by the Tribunal. The difference would be Rs. 21,540/-. As per the 2nd Schedule, apart from the same, the appellant is entitled to compensation for pain and sufferings to the extent of only Rs. 5000/- and medical expenses to a maximum of Rs. 15,000/-. Those amounts have already been awarded to the appellant by the Tribunal. In the above circumstances, the appellant is not entitled to any enhancement under any other heads. Consequently, the appellant would be entitled to additional compensation of Rs. 21,540/- over and above what has been awarded by the Tribunal. This amount would carry interest at the rate of 9% per annum from the date of the claim petition till date of payment. The 2nd respondent-insurance company is directed to deposit this amount also within two months.

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