
(2016) 01 KL CK 0046
In the High Court Of Kerala
Case No : MACA. No. 700 of 2015.

Sunil	Vs	APPELLANT
Munavarudheen and another		RESPONDENT

Date of Decision : 14-01-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 168

Citation : (2016) AAC 1208 : (2016) 2 KHC 859

Hon'ble Judges : P.R. Ramachandra Menon; Anil K. Narendran, JJ.

Bench : Division Bench

Advocate : Jeena Joseph and G.D. Panicker, Advocates, for the Appellant;
Mathews Jacob (Sr.), P. Jacob Mathew, Preethy R. Nair and M.A. George,
Advocates, for the Respondent

Final Decision : Allowed

Judgement

P.R. Ramachandra Menon, J. - Inadequacy of the compensation awarded by the Tribunal in respect of the injuries sustained by the appellant in a road traffic accident occurred on 26.06.2010 is the subject matter of this appeal.

2. The factual position revealed from the proceedings is that the appellant was proceeding on a motor cycle bearing No.KL.45/A/9044, riding the same with another person (claimant in O.P.(MV) No.1141 of 2010) on the pillion. When they reached the place of occurrence, a lorry bearing No.KL.06/D/7222 driven by the first respondent before the Tribunal and insured by the second respondent allegedly applied the brake abruptly in the attempt to take a right turn, upon which the motor cycle hit against the rear side of the lorry resulting in injuries to both the riders.

3. On filing claim petition before the Tribunal, despite the completion of service of notice, the first respondent did not turn up and was set ex-parte. The second respondent/insurer admitted the policy, however disputed the liability on various grounds. The evidence adduced before the Tribunal consists of Exts.A1 to A14,

besides the oral deposition of P.Ws.1 to 3. Based on the evidence adduced, the Tribunal held that the accident was because of the negligence on the part of the rider of the motor cycle, i.e. the appellant herein and also of the first respondent and accordingly, the ratio was fixed at 50:50. Awarding amounts under different heads, the total compensation was fixed as Rs. 434050/-. But based on the negligence fixed to an extent of 50%, only a sum of Rs.217030/- was ordered to be satisfied with interest at the rate of 7.5% per annum from the date of petition, till realisation. The appellant is aggrieved of the course and proceedings pursued by the Tribunal and hence the appeal.

4. Heard the learned counsel for the appellant and also Mr. Mathews Jacob, the learned Sr.Counsel for the second respondent/Insurance Company.

5. When the matter came up for consideration before this Court on 12.11.2015, in response to a query made by this Court, the learned Counsel for the appellant had sought for time to ascertain whether the appellant was having valid driving licence and if so, to have it procured and produced. Further time was granted on 20.11.2015. Today, the learned counsel submits that despite the best efforts taken by her, no positive instructions could be obtained in this regard.

6. The learned Sr.Counsel for the Insurance Company submits that the appellant was examined as P.W.1 before the Tribunal and in the course of evidence before the Tribunal, it was conceded that he was not having any valid driving licence. It is also pointed out that, the appellant was not wearing helmet/headgear and was riding the vehicle in violation of the relevant provisions of the M.V.Act. That apart, admittedly, the lorry was proceeding in front and the accident occurred, when the motor cycle ridden by the appellant dashed against the rear side of the lorry and hence, fixation of negligence to an extent of 50% upon the insurer and the liability cast accordingly, is not correct or sustainable under any circumstance. Incidentally, we note that the owner of the lorry was never arrayed in the party array, but for the driver of the vehicle. Still, the proceedings were finalised, awarding compensation and fixing liability upon the Insurance Company. Since no challenge was raised by the Insurance Company in this regard, we do not find it necessary to deal with the issue at this stage.

7. With regard to the course and events, the Tribunal has discussed the issue with regard to negligence in paragraph 7 of the Award. There is no dispute with regard to the fact that the lorry insured by the second respondent was proceeding in front and that the motor cycle ridden by the appellant was proceeding behind and that it dashed against the rear side of the lorry. The explanation offered by the appellant before the Tribunal was that the lorry suddenly took a right turn and also abruptly applied the brake, which made the motor cycle to go and hit against the rear side of the lorry. It was also deposed by the witnesses before the Tribunal that the Motor Cycle was being ridden at a very slow speed of "40 Km per hour"; whereas the lorry was being driven in a rash and negligent manner at about "80 Km per hour". The fallacy of the said statement has been discussed by the Tribunal in the very same paragraph,

holding that under no circumstance, could a motor cycle, which was being ridden at a speed of 40 Kms have reached anywhere near the lorry which was proceeding in front at a speed of 80Kms per hour. As rightly observed by the Tribunal, there was a duty cast upon the rider of the vehicle, which was proceeding behind, to keep safe distance in the manner as provided under Regulation No.23 of the Rules of the Road Regulations, 1989, which have been formulated by the State in exercise of the power and jurisdiction conferred under Section 118 of the Motor Vehicles Act, 1988.

8. With regard to the submission made by the learned Sr. Counsel for the appellant as to the fixation of negligence, referring to the hit from behind invited by the appellant himself, the fact remains that the award was passed way back on 30.10.2014. The finding, including fixation of ratio of negligence has not been challenged by the Insurance Company at any point of time and hence it has become final. In so far as there is no dispute with regard to the factual sequence, the finding arrived at by the Tribunal based on the available materials on record (including the depositions given by the P.Ws.1 and 2 also conceding that the rider was not having any valid driving licence), the finding rendered by the Tribunal on the question of negligence apportioning the same as 50:50 does not warrant any interference. The only point to be considered is whether the quantum already fixed by the Tribunal is correct or sustainable.

9. The case projected by the appellant before the Tribunal was that he had been working as an "X-ray Welder" with a monthly income of Rs.5000/-. The injuries sustained by the appellant/claimant as discussed in paragraph 8 are the following:

"He has suffered injuries as per Ext.A5 wound and Ext.A6 discharge summary are multiple abrasions, lacerated wound . elbow, lacerated wound on dorsum of (L) foot, I.V.H . lateral ventricle, tentorial SAH, contusion (L) cerebellar hemisphere, lax brain and fracture . maxilla, liver laceration with trauma, haemoperitonium and pleural effusion."

10. Despite the claim for Rs.5000/- as the monthly income, the Tribunal reckoned only a sum of Rs.3500/- as the notional monthly income and awarded compensation under different heads, fixing total compensation at Rs.434050/- and ordering half of it to be satisfied in view of the negligence fixed in an equal proportion. The amounts awarded as aforesaid, as given in the table forming part of paragraph 8 of the Award, are as given below:

Head Amount(Rs.)

Loss of earnings 10500

Transportation expenses 1500

Damage to clothing 500

Extra nourishment 500

Medical expenses 3,40,100

Personal assistance 5250

Pain and suffering 25000

Permanent disability 35700

Loss of amenities 15000

Total 434050

11. The learned Counsel for the appellant points out that the observation made by the Tribunal that there was no evidence with regard to income or avocation is not correct and that the appellant was examined as P.W.1 before the Tribunal. Admittedly, the accident was on 26.06.2010. Considering the economic conditions prevailing on the date of the accident, we find that the income fixed by the Tribunal is on the lower side. We also find that the claim put forth by the claimant that he was getting Rs.5000/- does not require to be doubted in any manner and we reckon the entire extent of Rs.5000/- as the notional monthly income, as claimed by the appellant/claimant who was stated as a Welder (which extent could be reckoned even if he was only a general worker). Considering the nature and extent of injuries, we find that the "loss of earning" fixed by the Tribunal for "three months" is quite inadequate and that at least 6 months would be necessary to have regained normalcy. On working out compensation under this head, based on the enhanced monthly income, it comes to Rs.30000/- (5000 x 6). After giving credit to the sum of Rs.10500/-, the balance comes to Rs.19500/-. The permanent disability also requires to be re-worked, upon which it comes to Rs.540000/- (5000 x 12 x 18 x 50/100). After deducting the sum of Rs.35700/-, already awarded by the Tribunal, the balance comes to Rs.504300/-. Despite the serious injuries noted above, only a sum of Rs.15000/- has been awarded by the Tribunal towards loss of amenities and enjoyment in life. We find it appropriate to grant a further sum of Rs.10000/- under this head.

12. In the above facts and circumstances, the total balance compensation comes to Rs.5,33,800/-(Rupees five lakhs thirty three thousand and eight hundred only). By virtue of fixation of negligence in an equal proportion, the appellant, who was held as liable to an extent of 50% in causing the accident, is entitled to get only 50% of the enhanced compensation as additional compensation. This being the position, the actual eligibility of the appellant for enhanced compensation is only to an extent of Rs.2,66,900/-(Rupees two lakhs sixty six thousand and nine hundred only). The said amount shall be satisfied with interest at the rate of 9% from the date of filing of the petition, till realisation. Since policy is admitted, we direct the Insurance Company to satisfy the due amount within one month from the date of receipt of a copy of this judgment. Appeal stands allowed to the said extent.