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(2016) 03 KL CK 0078

In the High Court Of Kerala

Case No : MACA No. 1115 of 2010

T.D. Anil Kumar — APPELLANT

Vs

S. Sudheer and Others — RESPONDENT

Date of Decision : 23-03-2016

Acts Referred:

Citation : (2016) 03 KL CK 0078

Hon'ble Judges : K. Ramakrishnan, J.

Bench : Single Bench

Advocate : Nagaraj Narayanan, Saijo Hassan, Prathap Pillai, A.S. Sabu, Rajan Velloth, Rafeek V.K. and Benoj C. Augustin, Advocates, for the Appellant;

Final Decision : Partly Allowed

Judgement

K. Ramakrishnan, J.—1. The claimant in O.P.(M.V.) No. 1319/2001 on the file of the Motor Accidents Claims Tribunal, Attingal is the appellant herein. The claim petitioner filed the application for compensation for the personal injuries sustained by him in a motor vehicle accident occurred on 02.07.2001. According to the claimant on 02.07.2001, at about 8.30 am, while the claimant was travelling in a motor cycle bearing registration No. KL-01/R-6258 as a pillion rider, owned and driven by the first respondent and insured by the 2nd respondent and when it reached the place of occurrence, the first respondent sweared the vehicle in a negligent manner due to which he was thrown off from the vehicle and sustained injuries. He was aged 28 years doing business in furniture and getting a monthly income of Rs. 5,000/- per month. He claimed a total compensation of Rupees One lakh on various heads.

2. The first respondent remained absent. The 2nd respondent entered appearance and filed counter statement admitting insurance of the vehicle. But they did not admit their liability to compensate the petitioner. They have further contended that there was no negligence on the part of the first respondent. It was due to the negligence of the petitioner that the accident occurred. They also contended that the first respondent has no valid driving licence to drive the

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vehicle. They also contended that the age, occupation, income, etc claimed by the petitioner is not correct and also the total compensation claimed is exorbitant and they prayed for dismissal of the application.

3. PWs. 1 and 2 were examined and Exts.A1 to A12 were marked on the side of the petitioner. No oral evidence was adduced on the side of the respondent. But, Ext. B1 is marked on the side of the 2nd respondent.

4. After considering the evidence on record, the court below found that the accident occurred due to the negligent driving of the motor cycle by the first respondent and awarded a total compensation of Rs. 27,485/- on various heads is as follows:

The court below directed respondents 1 and 2 to pay the amount jointly and severally and directed the 2nd respondent to deposit the amount by the award dated 05.01.2008. Thereafter, the 2nd respondent filed I.A. No. 1224/2008 for review the award on the ground that the pillion rider is not covered as per the policy and as per the order dated 22.07.2008, the Tribunal allowed the review application and exonerated the insurance company from paying the amount and made the first respondent alone to pay the amount. Dissatisfied with the modified award and also quantum of compensation awarded, the above appeal has been preferred by the claimant.

5. Heard Sri Vishnu Bhuvanachandran, counsel representing Sri Nagaraj Narayanan, counsel for the appellant and Sri Jacob Mathew, counsel appearing for the 2nd respondent and notice to the first respondent is dispensed with by a separate order today.

6. As regards the liability of the insurance company is concerned, at the time when the review application was filed, the law then stood was that even if the vehicle was covered by a comprehensive policy, the liability of the pillion rider is not covered unless additional premium is collected from the insured. It was on that basis that the Tribunal had by the modified award exonerated the insurance company from payment of the amount. But later, in the decision reported in National Insurance Company v. Balakrishnan [2012 (4) KLT SN 145 Case No. 139], the Supreme Court has held that in view of the recommendations of the Tariff Advisory Committee, the insurance company is liable to indemnify the insured in respect of risk of passengers/pillion rider in a car/motor cycle in the case of an comprehensive/package policy. So in view of authoritative pronouncement of the Supreme Court on this aspect, the finding of the Tribunal that insurance company is not liable to indemnify the insured for the risk of passenger carried in the motor cycle as a pillion rider is unsustainable in law and the same is liable to be set aside. So the finding of the court below to that extent is set aside and insurance company is liable to indemnify the insured for the risk of passenger carried in the motor cycle as a pillion rider as the vehicle is insured with a comprehensive/package policy.

7. As regards the quantum of compensation is concerned, though PW-1 was

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examined he had not produced any document to prove that he is getting Rs. 5,000/- per month from his business. The court below had correctly took the monthly income of the injured as Rs. 2,000/- per month. It is seen from Ext. A4 treatment certificate, Ext. A6 OP Ticket from Medical College Hospital, Thiruvananthapuram, Ext. A7 discharge slip from Government Hospital, Peroor Kada and Exts.A8 to A10 that he sustained near amputation of right little toe and suspected fracture to first phalanx and he was treated as in patient from 03.07.2001 to 26.07.2001 and the right little toe at proximal inter phalangeal joints level was amputated. Ext. A11 disability certificate shows that he is having 2% disability. The court below had only awarded two months'' income as loss of earnings during the period of treatment. Considering the nature of injuries sustained and also considering the fact that he was treated as in patient for 24 days, he could not have attended his work for at least four months and he is entitled to get compensation during that period. So I am inclined to enhance the compensation to Rs. 8,000/- taking the treatment period as four months and award Rs. 8,000/- under the head ''loss of earnings'' during the period of treatment and deducting Rs. 4,000/- awarded by the Tribunal, he will be entitled to an additional amount of Rs. 4,000/- more under this head.

8. The Tribunal has awarded only Rs. 10,000/- under the head ''payment and suffering''. Considering the nature of injuries sustained and the treatment undergone, the amount awarded appears to be on the lower side and the same is enhanced to Rs. 15,000/- thereby he is entitled to get an additional amount of Rs. 5,000/- under this head.

9. The Tribunal has taken 2% disability and awarded an amount of Rs. 8,160/- under the head ''loss of earning capacity'' and another amount of Rs. 2,500/- under the head ''loss of amenities in life''. Considering the nature of disability, there is no possibility of any disability being caused affecting the earning capacity of the injured. But even in cases where the disability did not affect his earning capacity, it may have some impact on his personal life and also cause inconvenience in his life. Being amputation of little toe at the right leg, it may cause disfiguration to his leg. Further, he was aged only 28 years at that time. So, instead of awarding compensation under the head ''loss of earning capacity'' and also further amount under ''loss of amenities in life'' as done by the court below, this Court feels that a consolidated amount can be awarded under the head ''loss of amenities in life'' on account of the disability suffered by him, considering his age and nature of injuries sustained and disability caused. So a consolidated amount of Rs. 25,000/- is awarded under the head ''loss of amenities in life'' and deducting Rs. 10,660/- awarded by the Tribunal under both heads ''loss of earning capacity'' and ''loss of amenities in life'', he will be entitled to get an additional amount of Rs. 14,340/- under this head.

10. Further, no amount was awarded under the head ''by-stander''s expense'' though he was treated as in-patient for 24 days. So, an amount of Rs. 2,400/- is awarded under the head.

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11. Though the counsel for the appellant vehemently argued for enhancement on other heads, this Court is not inclined to enhance the same as the Tribunal has awarded just and proper compensation on other heads.

12. In all, the appellant will be entitled to get an additional compensation of Rs. 25,740/-, which can be rounded to Rs. 26,000/-, which, the 2nd respondent insurance company is liable to pay with 9% interest from the date of petition till payment excluding the period of delay of 809 days in filing the appeal as ordered by this Court in C.M. Appl. No. 1410/2010 dated 26.05.2015. The insurance company is directed to pay the amount awarded by the Tribunal also with interest as directed by the Tribunal if not already deposited. If the amount is deposited, the petitioner is permitted to withdraw the amount. Three months'' time is granted to the insurance company to deposit the amount.

With the above modification of the impugned award passed by the Tribunal, the appeal is allowed in part and disposed of accordingly.

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