(2012) 03 KL CK 0157

In the High Court Of Kerala

Case No : MACA. No. 70 of 2008

The New India Assurance Co. Ltd. APPELLANT

Vs

Santhakumar, The Managing Partner, M/s. Kav Sheik Rowther, Market Road, Palakkad Ottappalam Taluk and Suresh Kumar RESPONDENT

Date of Decision : 21-03-2012

Acts Referred:

Citation : (2012) 03 KL CK 0157

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

Bench : Division Bench

Advocate : VPK. Panicker, for the Appellant; Santheep Ankarath, for the Respondent

Final Decision : Allowed

Judgement

Ramakrishna Pillai, J.—The Insurance Company is in appeal. A 38 year old lineman working in Kerala State Electricity Board met with an accident on 3/6/2004 while he was riding his motor cycle.

2. Allegedly the third respondent(hereinafter referred to as the claimant) was hit down by a lorry which was insured with the appellant Insurance company. Against the claim of Rs. 2,50,000/-, the learned Tribunal awarded Rs. 1,76,000/- as compensation. The main challenge put forward by the appellant Insurance company is that the amount awarded by the learned Tribunal under the head of loss of earnings as well as under the head of permanent disability are on the higher side.

3. We have heard the learned counsel for the appellant-Insurance company and the learned counsel for the respondents. We have also perused the impugned award.

4. Admittedly, the claimant was a lineman working in the Kerala State Electricity Board. As per Ext. A8 certificate, he was drawing a monthly salary of Rs. 6412/-. The learned Tribunal after deducting 1/3rd of the monthly income awarded a

compensation for loss of earning for five months which comes to Rs. 21,875/-. It was submitted by the learned counsel for the appellant that no evidence was adduced to show that the claimant was on leave for a period of five months. The claimant sustained a fracture to tibia and malleolus. He was hospitalised for 13 days under different spells. So, presumably the claimant might not have been able to go for work at least for a period of three months. Ext. A8 certificate was admitted in evidence without any opposition. We are of the view that the claimant is entitled to get compensation for loss of earning at the rate specified in Ext.A8. As there is no glaring difference between the amount now awarded and the amount that will be arrived at on the basis of the recalculation above, we are not interfering with the amount awarded for compensation for loss of earning.

5. Coming to the compensation for permanent disability, we notice that the learned Tribunal has accepted the monthly income of the claimant in Ext.A8 certificate. The main contention by the appellant is that the claimant is still continuing in his job and the compensation for permanent disability which was calculated on the present monthly income of the claimant is unjustifiable. Ext.A9 disability certificate which was admitted in evidence and proved through PW2 shows that the claimant is having a permanent disability of 25%.

6. On a perusal of Ext. A9, it can be seen that it relates to the particular limb. By converting the same in relation to a whole body, the disability of the claimant can be fixed at 10%. Proper multiplier applicable to the age group is 16. A notional income has to be fixed for arriving at the quantum of compensation for residual disability as the claimant is still continuing in his job. Considering the age of the claimant, we fix the notional income of the claimant for compensation for permanent disability at Rs. 3,000/-. When compensation for permanent disability is recalculated as above, it will come to Rs. 57,600/-. The learned Tribunal has awarded Rs. 1,18,125/- as compensation under that head. The same shall stand reduced by Rs. 60,525/-.

7. We have reappraised the amount of compensation awarded by the Tribunal under other heads also. The learned Tribunal has awarded a sum of Rs. 10,000/- only as compensation for pain and suffering. We are of the view that the claimant is entitled to get more amount towards that head. Hence, we are awarding an additional sum of Rs. 5,000/- on that count. We also notice that though the claimant might have been compelled to take rest for a few months, no amount has been awarded for loss of amenities. Hence, we are awarding Rs. 5,000/- on that count. We also notice that towards transportation expenses, the Tribunal has awarded only Rs. 1500/-. We are awarding an additional sum of Rs. 525/- on that count. The aforesaid calculation will take us to the conclusion that the original amount awarded by the Tribunal will stand reduced by Rs. 50,000/- (60,525- 10525).

The appeal is allowed. The impugned award shall stand modified as above.