
(2012) 11 KL CK 0014
In the High Court Of Kerala
Case No : M.A.C.A. No. 2233 of 2011

Thomas

APPELLANT

Vs

Shaiju Paul, K.C. Venugopal and United India Insurance Co.
Ltd.

RESPONDENT

Date of Decision : 22-11-2012

Acts Referred:

Citation : (2012) 11 KL CK 0014

Hon'ble Judges : M.L. Joseph Francis, J;K.T. Sankaran, J

Bench : Division Bench

Advocate : Vipin Narayan and Sri. Ajeesh K. Sasi, for the Appellant; P.V. Jyothi Prasad, for R3, for the Respondent

Final Decision : Allowed

Judgement

Joseph Francis, J.—This appeal is filed by the petitioner in O.P. (MV) No. 205 of 2006 on the file of the Motor Accidents Claims Tribunal, Perumbavoor. The case of the petitioner in the O.P. (MV) is briefly as follows : On 5.10.2005 at about 12.15 p.m., the petitioner was riding a Scooter through Mannoor-Vengola PWD road in east-west direction and when he reached at Valayanchirangara, a bus bearing Registration No. KL-7/M-5366 driven by the first respondent in a rash and negligent manner hit on the Scooter, as a result of which, the petitioner sustained serious injuries. The second respondent was the owner of the bus and the third respondent was the insurer. The petitioner claimed Rs. 10,00,000/- as compensation.

2. Respondents 1 and 2 remained ex parte. The third respondent filed written statement admitting the policy of the bus and contended that the accident was not due to negligence of the first respondent and that the compensation claimed is excessive.

3. Before the Claims Tribunal, PW1 was examined and Exts. A1 to A10 were marked. The learned Tribunal, on considering the evidence on record, found that

the accident was due to the rash and negligent driving of the first respondent and awarded a compensation of Rs. 5,80,794/- to the petitioner together with interest at the rate of 8% per annum from the date of the petition till the date of realization from the respondents and the third respondent was directed to deposit the amount as the insurer. Being dissatisfied with the quantum of compensation awarded, the petitioner filed this appeal.

4. Heard the learned counsel for the appellant and the learned counsel appearing for the Insurance Company.

5. The learned counsel for the appellant submitted that the compensation awarded is very low and that the appellant is entitled to get enhanced compensation under various heads. The learned counsel appearing for the Insurance Company supported the award.

6. The Tribunal awarded compensation under various heads as follows :

Immediately after the accident, the petitioner was taken to Specialists Hospital, Ernakulam and he was treated there as an inpatient for 48 days. Ext. A7 is the wound certificate issued from the Hospital. As per the wound certificate, the petitioner was admitted in the hospital on 5.10.2005 at 1 p.m. and the Casualty Medical Officer of that Hospital examined him and noted the following injuries :

1. Compound fracture femur.
2. Traumatic amputation right leg.
3. Fracture proximal phalanx.
4. Fracture metacarpal of right index finger.

X-ray was taken and fracture confirmed. Ext.A6 is the discharge summary issued from Specialists Hospital, Ernakulam for the inpatient treatment of the petitioner in that hospital for the period from 5.10.2005 to 23.11.2005. The diagnosis is Type III A compound fracture femur and traumatic amputation of right leg. Wound debridement and Guillotine amputation, stump closure, SSG etc. were done and closed interlocking nail femur K wire fixation right 2nd metacarpal and tendon repair done. Ext. A8 is the discharge summary for the inpatient treatment for the period from 25.8.2010 to 30.8.2010. At that time, he was admitted for screw removal hip with Recon Nailing on 12.8.2010. He was treated with antibiotics and discharged with advice to review on 13th September. Ext. A9 is a photograph showing the amputation of his right leg below knee. Ext.A10 series are medical bills for a total sum of Rs. 2,41,144/- incurred in connection with the treatment of the petitioner.

8. The medical records would show that due to the accident, the petitioner's right leg below knee was amputated. The Tribunal assessed the percentage of disability of the petitioner as 50% based on Schedule I Part II of the Workmen's Compensation Act. According to the petitioner, at the time of accident, he was aged 41 years and was earning Rs. 6,000/- per month from his business. But,

the Tribunal assessed the monthly income of the petitioner as Rs. 3,000/- which according to us is on the lower side and we fix the monthly income of the petitioner as Rs. 4,000/-. The Tribunal took the multiplier as "14", considering the age of the petitioner. Calculating on that basis, the petitioner is entitled to get Rs. 3,36,000/- ($4000 \times 12 \times 14 \times 50/100$) as compensation for permanent disability, instead of Rs. 2,52,000/- awarded by the Tribunal. Rs. 48,000/- is granted towards compensation for loss of earnings for 12 months, in the place of Rs. 36,000/- awarded by the Tribunal. Rs. 2,000/- claimed towards transportation charges is granted, in the place of Rs. 1,000/- awarded by the Tribunal. Rs. 1,000/- claimed towards compensation for damage to clothing is allowed in the place of Rs. 250/- awarded. Considering the nature of injuries sustained and the treatment undergone, the petitioner is allowed to get Rs. 50,000/- towards compensation for pain and suffering, in the place of Rs. 24,000/- awarded. The petitioner is entitled to get Rs. 75,000/- towards compensation for loss of amenities in life, in the place of Rs. 15,000/- awarded. Thus, in total, the petitioner is entitled to get Rs. 1,83,750/- as additional compensation.

Accordingly, this appeal is allowed in part and the appellant is allowed to realize Rs. 1,83,750/- as additional compensation together with interest at the rate of 7.5% per annum from the date of the petition till the date of realization from the respondents and the third respondent is directed to deposit the amount within three months from this date. There is no order as to costs.