(2021) 06 KL CK 0366

In the High Court Of Kerala

Case No : MACA NO. 228 Of 2012

T.K.Thankappan APPELLANT

Vs

M.V.Joy RESPONDENT

Date of Decision : 24-06-2021

Acts Referred:

Motor Vehicles Act, 1988 — Section 147, 147(1)
Employees Compensation Act, 1923 — Section 4(1), 4(1)(d), 4(2)

Citation : (2021) 06 KL CK 0366

Hon'ble Judges : C.S.Dias, J

Bench : Single Bench

Advocate : K.V.Rajan, Lal George

Final Decision : Allowed

Judgement

C.S.Dias, J

1. The appellant was the petitioner in O.P (MV) No.891/2006 on the file of the Motor Accident Claims Tribunal, Ernakulam. The respondents in the

appeal were the respondents in the claim petition.

2. The facts in the claim petition, relevant for the determination of the appeal, are that: on 22.12.2005 while the appellant was travelling as a cleaner in

a tipper lorry bearing Reg. No.KCF/4003 driven by the 1st respondent, the vehicle lost control and crashed against a concrete pillar causing injuries to

the appellant. The accident occurred solely due to the negligence on the part of the 1st respondent, who was the owner-cum-driver of the vehicle. The

2nd respondent is the insured of the vehicle. The appellant was earning a monthly income of Rs.4,000/-. Hence, he claimed a compensation of

Rs.2,28,000/-under different heads.

3. The 1st respondent did not contest the proceedings and was set ex parte.

4. The 2nd respondent â?" insurance company filed a written statement admitting that the offending vehicle in question had a valid insurance policy

issued by it. However, it was contended that the Insurance Company was not liable to pay compensation to the appellant as he was a gratuitous

passenger travelling in a goods vehicle. Nevertheless, it was conceded that if the appellant was an authorised employee, the liability of the insurance

company was limited under the Employees Compensation Act, 1923 (for brevity referred to as 'Act') as provided under Section 147 of the Motor

Vehicles Act, 1988.

5. The appellant produced and marked Exts. A1 to A13 in evidence. The 2nd respondent produced and marked Ext.B1 copy of the insurance policy.

6. The Tribunal, after analysing the pleadings and materials on record, by the impugned award allowed the claim petition, in part, by permitting the

petitioner to recover a sum of Rs.1,11,785/- with interest at the rate of 8% per annum from the respondents 1 and 2. The liability of the 1st respondent

was restricted to the amount specified under the Act.

7. Dissatisfied with the award passed by the Tribunal, the petitioner is in appeal.

8. Heard Sri.K.V.Rajan, the learned counsel appearing for the appellant and Sri.Lal George, the learned counsel appearing for the 2nd respondent.

9. The learned counsel appearing for the appellant submitted that the Tribunal has gone wrong by not quantifyingÂ theÂ compensationÂ payableÂ

byÂ eachÂ ofÂ the respondents, instead has permitted the petitioner to recover the compensation from the 2nd respondent as provided under the

Act, which makes the award bad for vagueness. Moreover, the Tribunal had not assessed the disability of the appellant, which ought to have been

done. Hence the appellant be given one more opportunity to get his disability assessed by a competent Medical Board.

10. Per contra, Sri.Lal George, the learned counsel appearing for the 2nd respondent argued that the liability of the insurance company is provided

under Sections 4(1) and 4(2) of the Act. He vehementally opposed the prayer of the learned counsel for the appellant to subject the appellant for

examination by a Medical Board, as more than 1Â½ decades have elapsed after the accident. He also contended that the Tribunal has gone wrong in

directing the 2nd respondent to pay the medical expenses incurred by the appellant since there is no provision under the Act permitting such a course

to be adopted. He, therefore, prayed that the appeal as against the 2nd respondent be dismissed.

11. The questions that arise for consideration in the appeal are:

(i) Whether the course adopted by the Tribunal permitting the petitioner to recover the medical expenses and the statutory liability as provided under

the Employees Compensation Act, 1923 from the 2nd respondent is correct; and

(ii) Whether the amount of compensation awarded by the Tribunal is just and reasonable?

12. Undisputedly, the respondents have not challenged the impugned award.

13. Although the 2nd respondent had taken up a contention in the written statement that the appellant was a gratuitous passenger in the vehicle, they

conceded that he was an employee and was entitled for compensation as provided under the Employees Compensation Act, 1923 r/w Section 147(1)

(b) of the Motor Vehicles Act, 1988, since the 2nd respondent had collected additional premium from the 1st respondent.

14.Â Sections 4 (1) and 4 (2) of the Act read as follows:

â??4. Amount of compensation :- (1) Subject to the provisions of this Act, the amount of compensation shall be as follows, namely:-

(a) Where death results from the injury an amount equal to (fifty percent) of the monthly wages of

the deceased (employee) multiplied by the relevant factor;

or

an amount of (one lakh and twenty thousand rupees),

whichever is more;

(b) Where permanent total disablement results from the an amount equal to (sixty percent) of the monthly wages of

injury the injured (employee) multiplied by the relevant factor,

or

a n amount of (one lakh and forty thousand rupees),

whichever is more;

(Provided that the Central Government may, by notification in the Official Gazette, from time to time, enhance the amount of compensation mentioned in clauses (a) and (b).

Explanation I â?" For the purpose of clause (a) and clause (b), â??relevant factorâ?, in relation to a (employee) means the

factor specified in the second column of Schedule IV against the entry in the first column of that Schedule specifying the

number of years, which are the same as the completed years of the age of the (employee) on his last birthday immediately

preceding the date on which the compensation fell due

Where permanent partial disablement results from the injury (i) in the case of an injury specified in Part II of Schedule I,

such percentage of the compensation which would have

been payable in the case of permanent total disablement as

is specified therein as being the percentage of the loss of

earning capacity caused by that injury, and

(ii) 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.

Explanation I:- Where more injuries than one are caused by the same accident, the amount of compensation payable under

this head shall be aggregated but not so in any case as to exceed the amount which would have been payable if permanent

total disablement had resulted from the injuries.

Explanation II:- In assessing the loss of earning capacity for the purposes of sub-clause (ii), the qualified medical

practitioner shall have due regard to the percentages of loss of earning capacity in relation to different injuries specified in

Schedule I;

Where temporary disablement, whether total or partial, a half-monthly payment of the sum equivalent to twenty-

results from the injury five per cent of monthly wages of the (employee), to be paid in accordance with the provisions of sub-section (2).

(I-A) Notwithstanding anything contained in sub-section (1), while fixing the amount of compensation payable to a

(employee) in respect of an accident occurred outside India, the Commissioner shall take into account the amount of

compensation, if any, awarded to such (employee) in accordance with the law of the country in which the accident

occurred and shall reduce the amount fixed by him by the amount of compensation awarded to the (employee) in

accordance with the law of that country.

Â (I-B) The Central Government may, by notification in the Official Gazette, specify, for the purposes of sub-section (1),

such monthly wages in relation to an employee as it may consider necessary.

Â (2) The half-monthly payment referred to in clause (d) of subsection (1) shall be payable on the sixteenth day-

Â (i) from the date of disablement where such disablement lasts for a period of twenty-eight days or more, or

Â (ii) after the expiry of a waiting period of three days from the date of disablement where such disablement lasts for a

period of less than twenty-eight days; and thereafter half-monthly during the disablement or during a period of five years,

whichever period is shorter;

Provided that-

(a) there shall be deducted from any lump sum or halfmonthly payments to which the employee is entitled the amount of

any payment or allowance which the employee has received from the employer by way of compensation during the period

of disablement prior to the receipt of such lump sum or of the first half-monthly payment, as the case may be; and

(b) no half-monthly payment shall in any case exceed the amount, if any, by which half the amount of the monthly wages

of the employee before the accident exceeds half the amount of such wages which he is earning after the accident.

Explanation: - Any payment or allowance which the employee has received from the employer towards his medical treatment shall not be deemed to be a payment or allowance received by him by way of compensation within the meaning

of clause (a) of the proviso.â??

15. The Tribunal has permitted the petitioner to recover the medical expenses of Rs.39,585/- based on Ext.A12 bills and also the liability of the 2nd

respondent as as provided under the Act.

16. On a reading of the above extracted provision, it is clear that there was no provision under the Act permitting the appellant to recover the medical

expenses prior to 18.1.2010.

17. It was as per Act 45 of 2009 , which came into effect on 18.1.2010, that an employee is permitted to realise the medical expenses from the

insurer. However, the accident in question occurred on 22.12.2005, when Act 45 of 2009 was not in force. Also, the Act has no retrospective

operation.

18. Therefore, the appellant cannot be permitted to claim medical expenses from the insurer.

19. In light of the above extracted provision, the appellant can only be permitted to realise compensation from the insurance company as provided

under Section 4 (1) &(2) of the Act.

20. It is proved that the appellant was treated as an inpatient for a period of 36 days in the Medical Trust Hospital as discernible from Ext.A12

medical bills and Ext.A13 certificate. His alleged disability was not assessed either by a Doctor or by a competent Medical Board.

However, the Tribunal, awarded a compensation of Rs.12,000/-under the head 'loss of earning' and Rs.20,000/-under the head 'loss of amenities',

totalling to an amount of Rs.32,000/-.

21. At this distance of time after a lapse of more than one and half decades, it would be a travesty of justice to remit the matter back to the Tribunal

to assess the permanent/temporary disability of the appellant to fix the compensation payable by the insurer under under Section 4(1) and (2) of the

Act and the remaining compensation by the employer.

22. IfÂ theÂ appellantÂ hasÂ aÂ permanentÂ disability, certainly,the same has to be assessed by a qualified Medical Practitioner, which has not

been done. Therefore, the case has to necessarily be treated as one falling under

Section 4(1)(d) of the Act, i.e. temporary disablement, wherein, the

appellant would be entitled for half monthly payment equivalent to 25% of his monthly wages to be paid in accordance with the provisions of sub-

section(2) of Section 4 the Act. The appellant had claimed only an amount of Rs.4,000/- as his monthly income.

22. In the peculiar facts and circumstances of the case and on equitable grounds, considering the enactments as beneficial legislature and to avoid an

unnecessary remand and a further round of litigation, I am of the considered opinion that interest of justice would be met by holding that the

compensation awarded under the heads 'loss of earnings' and 'loss towards amenities' to be treated as the compensation payable under Section 4(1)(d)

read with Section 4(2) of the Act as the liability of the insurance company and the remaining amount to be liability of the 1st respondent- the owner of

the vehicle.

In the result, I allow the appeal by modifying the award by directing the 2nd respondent to pay an amount of Rs.32,000/- as its liability with 8% interest

from the date of petition till the date of deposit and proportionate costs, and permitting the appellant to recover the balance amount of Rs.79,785/- with

interest at the rate of 8% per annum from the date of petition till the date of realisation along with proportionate costs from the 1st respondent.