

(2013) 09 KL CK 0022
In the High Court Of Kerala
Case No : MACA No. 504 of 2010

T.V. Francis

APPELLANT

Vs

Prasanth, Saji and ICICI Lombard General Insurance Co. Ltd.

RESPONDENT

Date of Decision : 26-09-2013

Acts Referred:

Citation : (2013) 09 KL CK 0022

Hon'ble Judges : S. Siri Jagan, J;K. Ramakrishnan, J

Bench : Division Bench

Advocate : Mathew John K and Sri. Ajeesh K. Sasi, for the Appellant; Lal George and Sri. R. Ajit Kumar Varma for R3, for the Respondent

Final Decision : Disposed Off

Judgement

S. Siri Jagan, J.—The claimant in O.P. (MV) No. 393/2008 before the Motor Accidents Claims Tribunal, Pala, is the appellant herein. He suffered very serious injuries including head injuries in an accident caused by the negligent driving of a vehicle owned and driven by respondents 1 and 2 and insured with the 3rd respondent. He filed the O.P. claiming compensation for the injuries and disabilities suffered by him. The Tribunal, after finding negligence on the part of the driver of the vehicle, awarded compensation under various heads as follows:

Loss of earnings

Rs. 12,000/-

Transport to hospital

Rs. 2,000/-

Extra nourishment

Rs. 1,000/-

Damage to clothing and articles

Rs. 1,000/-

Medical expense

Rs. 20,800/-

Bystander expense

Rs. 3,000/-

Pain and suffering

Rs. 20,000/-

Permanent partial disability

Rs. 45,000/-

Visual disability

Rs. 50,000/-

Loss of amenities and enjoyment of life

Rs. 10,000/-

Total

Rs. 1,64,800/-

Dissatisfied with the quantum of compensation awarded by the Tribunal, the appellant has filed this appeal seeking enhanced compensation.

The first contention raised by the appellant is that the monthly income fixed by the Tribunal is palpably low. It is submitted that the accident was on 5.12.2007 and the appellant was aged 45 years at the time of the accident. He was a rubber tapper by profession. He was earning Rs. 240/- per day from his avocation. Therefore, his income should have been fixed as at least Rs. 7,000/- p.m. But the Tribunal, after fixing monthly income notionally as Rs. 3,000/-, for six months' loss of earnings, granted only Rs. 12,000/- as compensation under that head. It is further submitted that although the Tribunal accepted the fact that he had 10% physical disability, the Tribunal awarded only Rs. 45,000/- for permanent partial disability and Rs. 50,000/- for visual disability. It is submitted that the appellant had very serious head injuries, despite which only Rs. 20,000/- has been awarded for pain and suffering. Further, for 60% visual disability and 10% physical disability, only Rs. 10,000/- has been granted towards compensation for loss of amenities and enjoyment in life. The appellant seeks enhancement of compensation under all heads.

2. We have heard the learned counsel for the Insurance Company also, who argues for sustaining the impugned award.

3. We have considered the rival contentions in detail.

4. It is common knowledge that a rubber tapper will not have work on every day. In fact, the rubber tapper's work is only on alternate days. The work would be seasonal also. In the above circumstances, in the absence of any reliable evidence regarding the income of the appellant, the fixation of monthly income of Rs. 3,000/- appears to be in order.

5. After holding that the appellant is entitled to six month's income as loss of earning, the Tribunal awarded only Rs. 12,000/- for loss of earnings. We therefore enhance the same to Rs. 18,000/-. The Tribunal accepted the fact that the appellant suffered 10% physical disability and 60% visual disability. Instead of considering the disability separately, we are of opinion that for the purpose of calculating loss of earning capacity, the whole body disability should be taken as 30%, co-relating the same to the avocation of the appellant. Consequently, the appellant is entitled to Rs. 1,51,200/- ($3000 \times 12 \times 14 \times 30\%$) instead of Rs. 95,000/- ($45,000 + 50,000$) for loss of earning power. The difference would be Rs. 56,200/-.

6. Considering the very serious injuries, particularly head injuries, we are inclined to enhance the compensation for pain and suffering to Rs. 30,000/- from 20,000/- awarded by the Tribunal. We are also inclined to enhance the compensation for loss of amenities and enjoyment in life to Rs. 40,000/- from Rs. 10,000/-, insofar as the visual disability and physical disability would affect his personal life to a very great extent. Adding together, the appellant would be entitled to an additional compensation of Rs. 1,02,200/- over and above what has been granted by the Tribunal. This amount would carry interest @ 9% p.a. from the date of the petition till the date of payment. The Insurance Company is directed to deposit this amount also within two months.

With the above modification of the award of the Tribunal, this appeal is disposed of.