
(1988) 04 KL CK 0004
In the High Court Of Kerala

United India Insurance Company Limited	APPELLANT
Vs	
Puthalan Kammad	RESPONDENT

Date of Decision : 07-04-1988

Acts Referred:

Motor Vehicles Act, 1988 — Section 110, 95

Citation : (1988) 2 ACC 318 : (1988) 1 KLJ 731

Hon'ble Judges : V. Sivaraman Nair, J;P.K. Shamsuddin, J

Bench : Division Bench

Judgement

V. Sivaraman Nair, J.—The owner and insurer of a passenger car bearing registration KLM 3013 have filed this appeal u/s 110 of the Motor Vehicles Act from the award of the Motor Accidents Claims Tribunal, Manjeri in M.A.C. No. 251 of 1981. They were respondents 3 and 2 respectively before the Tribunal in the application filed by the first respondent u/s 110A of the Motor Vehicles Act.

2. The short facts which led to this appeal are as follows: The first respondent herein, who is the applicant before the Tribunal and will be referred to in this judgment as the claimant, was knocked down by the car driven by the second respondent at about 1000/- p.m. on 23-8-1979 at Pazhayangaid near Kondotty. At that time, he was riding a bicycle from east to west along the southern side of the road. The passenger car, KLM 3013 came from the opposite direction in a rash and negligent manner and knocked down the bicycle and the claimant. Consequent on the injury sustained by him, his right leg was amputated below the knee. He sustained other injuries also. The claimant was engaged as a workman in a granite quarry and was earning Rs. 600/- to Rs. 750/- per month from his occupation. Consequent on the injury sustained by him and the amputation of his limb, he was disabled from taking up any serious avocation involving physical exertion. He claimed that he also lost the amenities of life for all times. He, therefore, claimed an amount of Rs. 1,31,800/- from the owner, driver and the insurer of the passenger car.

3. The claimant examined himself, two doctors and an eye witness to the

accident as witnesses. He also produced Ext. A1 medical certificate issued by PW-2 and Exts. A2 to A8 cash books for purchase of medicines. The respondents examined a passenger of the car as RW-1. The attempt of the appellant was to show that the accident occurred not due to the negligence of the driver of his car, but entirely due to the rashness and negligence on the part of the claimant.

4. On an examination of the evidence, the Tribunal found that the accident occurred due to the fact that the driver of the car was rash and negligent while overtaking a lorry and that he knocked down the bicycle and the claimant due to his negligence. The Tribunal found that the claimant had suffered the following injuries.

(a) Fracture of shaft of right femur,

(b) Compound fracture of both bones of right leg with extensive crushing of the whole leg. The foot was cold and peripheral circulation was absent. The viability of the leg was doubtful;

(c) Lacerated wound on the right side of forehead 3 inch x 2 inch bone deep and crack fracture of the frontal bone (on head).

The medical evidence indicated that the disability of the claimant consequent on the amputation was 30% and that he would suffer further disability consequent on the fractures. The claimant has disposed and that was substantially supported by Ext. X1, that the fracture was not completely cured at the time of his discharge. The stump of the amputated leg not infected and he had to be treated on later occasions also. The injuries on his leg, right shoulder and head, his hospitalisation for two months and ten days, the amputation of his right leg and the need for occasional treatment for the amputated stump, according to the Tribunal, justified the applicant in seeking a reasonable compensation. The Tribunal held, that the disability on account of the injuries would be 40% on the basis of the provisions contained in the Workmen's Compensation Act. The Tribunal also found that the appellant was entitled to compensation for loss of earnings during the period for shortened life expectation, for medical treatment, travelling expenses and future earnings, in view of the seriousness of the injuries and prolonged treatment. The Tribunal awarded an amount of Rs 600/- towards as compensation for pain and suffering; Rs. 1,500/- towards cost of treatment, expenses for transportation etc., and Rs. 7,500/- for past loss of earnings. This was determined on the basis of the assumption, that his monthly earnings would have been Rs. 250/-. The claimant was aged 28 years at the time of the accident. The Tribunal worked out the loss of his earnings consequent on the injury to be Rs. 3,000/- per year, 10 was adopted as the multiplier to arrive at Rs. 30,000/- as the compensation due for loss of future earnings.

5. The appellant submits, that the Tribunal erred in assuming that the claimant was entitled to compensation on the basis that his disability was total, whereas the percentage of disability was found to be only 30 to 40 per cent. According to counsel, compensation for loss of earnings and future earnings ought to have

been worked out on the basis that the applicant would have only 40% of that which he would have earned but for the accident.

6. We are not persuaded to accept this submission. Admittedly, the right leg of the claimant was amputated, leg was fractured above the knee. Consequent on those injuries it would not be possible for him to carry on the occupation in a granite quarry. That job requires sturdy and physically fit workmen. An invalid cannot easily find employment in a granite quarry. In the present conditions in our country, it will be hardly possible for an invalid or physically handicapped or incapacitated person to obtain employment in the usual course. In the highly competitive employment market, a person, who is physically fit and has no infirmities will quite reasonably obtain preference over invalids. It is not as if loss of earnings would be proportionate to the disability suffered by the invalid or disability, or handicap suffered by the claimant. It may more often be, that he may not obtain any employment Opportunity at all, only because of his serious disability and the consequent physical handicap. We cannot blindfold ourselves to the life around as and find fault with the Tribunal for arithmetical inexactitude in awarding compensation for total disability which was certified medically to be 30% to 40% only. We are expected to see whether the Tribunal erred in its assumption that the claimant would not be employed remuneratively because of his handicap. It may perhaps be that some of the physically handicapped make good despite and in defiance of their disabilities Those exceptions cannot be treated as the rule They only justify it. We are, therefore, of the opinion, that the Tribunal did not go wrong in assessing the compensation on the assumption, that the disability was near total.

7. The claimant has filed a cross-objection. The main points urged by Shri Moosa appearing for him were, that the Tribunal erred grievously in reducing the earnings of the claimant as Rs. 250/- per month or Rs. 3,000/-per year, and that the Tribunal went wrong in adopting 10 as the multiplier.

8. It is, of course true that the claimant had stated, that he was earning Rs. 20/- per day or about Rs. 650/- to 700/- per month as a workman in the quarry. There was, however, no positive evidence of either of these facts, or proof of the number of days in a month on which he would have worked. The claimant did not call evidence either oral or documentary to support his claim of Rs. 650/- to Rs. 750/- as his monthly earnings. He could have examined at least one of his colleagues to prove the average monthly earnings or the number of days of work. We are, therefore, of the opinion, that the Tribunal was right in making a reasonable assumption, that the claimant as a workman, would have earned at least an amount of Rs. 250/-per month. We, therefore, do not find any reason to interfere with the finding of the Tribunal that the monthly earning of the claimant would have been Rs. 250/- had it not been for the accident and the injuries sustained by him at a consequence thereof.

9. It appears to us, however, that the claimant is well founded in his second submission, that too short a period of life was applied as the multiplier. The

claimant was aged 28 years at the time of the accident. He would have lived and earned at least till the age of 60 years. May be, he would not have worked in a granite quarry that long. He would have continued there at least till the age of 60 years. May be, he would not have worked in a granite quarry that long. He would have continued there at least till he was 45 years of age. Even thereafter he would have earned a living by physical labour for 10 more years. Even after taking into consideration the uncertainties of the future and other possible handicaps which he would have suffered even otherwise, we are of the opinion, that the claimant is right in his submission, that at least 17 should have been adopted as the multiplier. In this view the amount of compensation assessed by the Tribunal is far too inadequate and has to be enhanced. We modify the award and enhance the compensation due to the claimant for loss of future earning as Rs. 51,000/- (Rs. 3,000/- x 17) instead of Rs. 30,000/- as determined by the Tribunal.

10. We are also of the opinion, that the rate of interest specified by the Tribunal as 6% from the date of the petition has also to be altered-realistically as was held by this Court in the decision reported in Annie Sebastian v. Joseph Olivero 1986 KLT 1173.

11. In this view, we dismiss the appeal and allow the cross-objection. The amount of compensation due to the claimant will be Rs. 66,000/- instead of Rs. 45,000/- as determined by the Tribunal. The respondents before the Tribunal will be jointly and severally liable to pay that amount along with interest at the rate of 9% from 17-11-1979. The insurer shall deposit the entire amount of compensation and interest, reduced by the mount already deposited by it. It will, however, be open for the insurer to recover any excess amount, over and above its statutory liability u/s 95(2)(b) of the Motor Vehicles Act, from the insured in proceedings u/s 96(4) of the Act. The parties will suffer their respective costs.