
(2014) 10 KL CK 0208
In the High Court Of Kerala
Case No : M.A.C.A No. 787 of 2012

V. Arun

APPELLANT

Vs

Joby K. John

RESPONDENT

Date of Decision : 28-10-2014

Acts Referred:

Citation : (2014) 10 KL CK 0208

Hon'ble Judges : T.R. Ramachandran Nair, J;P.V. Asha, J

Bench : Division Bench

Advocate : R. Girish, Advocate for the Appellant; Sarah Salvy and M.A. George, Advocate for the Respondent

Judgement

T.R. Ramachandran Nair, J.—In this appeal filed by the claimant, main grievance is regarding the lesser amount granted as compensation than what was claimed.

2. The total amount claimed by the appellant is for Rs. 4,27,328/- and an amount of Rs. 1,88,300/- has been granted.

3. We heard the learned counsel for the appellant and the learned counsel for the Insurance Company. Since there is total coverage under the policy, it is not necessary to hear the 1st respondent, on the quantum of compensation.

4. The accident occurred on 15.07.2006. The petitioner who was a minor at that point of time was travelling in a bicycle towards Kumaranelloor for attending tuition class. Then the car bearing Registration No. KL-50-1117 came and dashed against the bicycle. He suffered compound fracture both bones left leg and closed fracture both bones right leg. He was immediately taken to the Medical College Hospital, Kottayam and was an inpatient up to 07.08.2006. It is also stated that he had to M.A.C.A No. 787 of 2012, 2 continue the treatment for a long period.

4. Before the Tribunal, Exhibits A1 to A8 documents have been produced.

5. As regards the assessment of compensation we find that towards medical expenses Rs. 32,300/- has been granted relying upon Ext.A8 series medical bills.

Ext.X1 is the disability certificate issued by the Medical Board wherein the permanent disability has been assessed at 20% taking the body as a whole. The same has been accepted by the Tribunal. The learned Tribunal has awarded compensation in the following manner:

Sl.No. Head of claim

Amt. Claimed

Amt. Awarded

1 Transport to hospital

Rs.

1,000.00

Rs.

1,000.00

2 Extra nourishment

Rs.

2,500.00

Rs.

2,000.00

3 Damage to clothings

Rs.

1,500.00

Rs.

500.00

4 Medical expenses

Rs.

22,328.00

Rs.

32,300.00

5 Bystander"s expenses Nil.

Rs.

4,500.00

6 Compensation for pain and sufferings

Rs.

50,000.00

Rs.

20,000.00

7 Compensation for permanent disability Compensation for Nil

Rs.

3,50,000.00

Rs.

1,08,000.00

8 loss of amenities and loss of studies

Rs.

20,000.00

Total

Rs.

1,88,300.00

6. It is submitted by the learned counsel for the appellant that the notional income taken at Rs. 3,000/- is too low. He is a bright student and his father was a Government employee, who is a pensioner as of now. It is submitted that the permanent disability will affect his prospects in life as there is a shortening of 1 c.m in the right leg.

7. The disability after taking the whole body is assessed as 20%. By taking notional income as Rs. 3,000/- the compensation assessed for permanent disability is low.

8. We find that the notional income could have been assessed at a reasonable amount considering the fact that his father was a Government employee, he was a bright student. Thus he had good family background and could therefore expect high progress in education and for getting a proper job. As of now he is studying for M.B.A. In that view of the matter, we will take the notional income as Rs. 4,000/- for calculating the permanent disability. The disability will really cause loss of enjoyment of life and loss of amenities as the accident occurred at the age of 14 years. He is deprived of enjoyment and comforts as the other children of his age and also in pursuing sports or games. This disability is a continuing one going by the evidence. This is an aspect which can be considered by the court. Therefore, he is entitled for proper compensation for loss of amenities of life and loss of enjoyment of life.

9. Towards compensation for pain and suffering, only Rs. 20,000/- has been granted as against the claim of Rs. 50,000/-. In the light of the fact that he suffered serious injuries namely, Type III compound fracture of both bones left leg, closed fracture both bones of right leg and in the light of the fact that he had to undergo treatment including surgery and the continued treatment we are of the view that he is entitled for a higher amount towards pain and suffering.

10. It is submitted that he had to continue treatment as an outpatient for a considerable long period also.

11. We are therefore of the view that compensation can be refixed as follows:

Sl.No. Head of claim

Amt.

1 Transport to hospital

Rs.

3,000.00

2 Extra nourishment

Rs.

5,000.00

3 Damage to clothings

Rs.

500.00

4 Medical expenses

Rs.

32,300.00

5 Bystander's expenses

Rs.

9,000.00

6 Compensation for pain and sufferings

Rs.

40,000.00

7 Compensation for permanent disability

Rs.

1,44,000.00

8 Compensation for loss of amenities and loss of enjoyment of life

Rs.

40,000.00

Total

Rs.

2,73,800.00

12. Interest has been granted @ 7.5% per annum and going by the decision in *Supei Dei(Smt.) & Ors. v. National Insurance Co. Ltd. and Anr.* [(2009) 4 SCC 513], a uniform rate of 9% interest can be granted in this case also. Accordingly we direct that the Insurance Company will pay an amount of Rs. 2,73,800/- (Rupees Two lakhs seventy three thousand and eight hundred only) with 9% interest from the date of petition till realisation along with the cost awarded by the Tribunal below, within three months (less the amount if any already paid) to the appellant.

The appeal is allowed to the above extent. No cost.