(2013) 09 KL CK 0108

In the High Court Of Kerala

Case No : MACA No. 1577 of 2013

Velayudhan Pillai APPELLANT

Vs

Vijayakumar, Radha N. Pillai and National Insurance Co. Ltd., Represented by its Divisional Manager RESPONDENT

Date of Decision : 24-09-2013

Acts Referred:

Citation : (2013) 09 KL CK 0108

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

Bench : Division Bench

Final Decision : Disposed off

Judgement

K. Ramakrishnan, J.—The petitioner in O.P. (M.V.) No. 710/2005 on the file of the Motor Accidents Claims Tribunal, Mavelikkara, is the appellant herein. The appellant filed the application for compensation for the injuries and consequential disability sustained by him in an motor vehicle accident caused on account of the rash and negligent driving of the vehicle by the 1st respondent, owned by the 2nd respondent and insured with the 3rd respondent. After considering the evidence on record, the Tribunal found that the accident occurred due to the rash and negligent driving of the vehicle by the 1st respondent and awarded total compensation of Rs. 53,800/- under various heads as follows:

Head of claim

Amount

awarded

1 Loss of earning

9,000.00

2 Medical expenses

6,500.00

3 Bystander''s expenses

1,200.00

4 Transportation charges

1,000.00

5 Extra nourishment

2,000.00

6 Pain and sufferings

17,000.00

7 Disability

11,520.00

8 Loss of amenities and convenience etc.

5,000.00

9 Any other heads (review treatment)

500.00

Total

Total 53,720.00

Rounded to Rs. 53,800/-

Dissatisfied with the quantum of compensation awarded by the Tribunal, the appellant has come before this Court with the above appeal.

Since the liability of the insurance company is not disputed and quantum alone was challenged, we felt that the appeal can be disposed of at the admission stage itself after hearing the learned counsel for the insurance company and notice to other respondents is dispensed with.

2. Heard the learned counsel for the appellant and the learned counsel for the insurance company.

3. The learned counsel for the appellant submitted that the appellant was a driver by profession and getting Rs. 4,000/- per month. He had sustained 8% disability. But the Tribunal has taken only 4% disability for assessing compensation under the head, loss of earning capacity. Further, he was aged only 54 years. But the Tribunal has taken age group of 56 to 60 and taken 8 as multiplier, which is incorrect. Further, the amount awarded under the head, loss of amenities in life is also on the lower side. So, according to the counsel for the appellant, the appellant is entitled to enhancement on all heads.

4. On the other hand, the learned counsel for the insurance company submitted

that no evidence was adduced on the side of the appellant to prove his age. So, under the circumstances, the Tribunal was perfectly justified in placing the appellant in the age group of 56 to 60 and the amount awarded is just and proper and no interference is called for.

5. We have considered the rival contentions of the parties in detail. It is an admitted fact that the appellant was an autorickshaw driver by profession. He had claimed Rs. 4000/- as his monthly income. But, in the absence of any evidence adduced on the side of the appellant to prove his income, the Tribunal has notionally fixed the income of the appellant as Rs. 3,000/- per month. We do not find any reason to interfere with the same. It is true that the disability certificate produced on the side of the appellant shows that he sustained 8% disability. But it was admitted by him in evidence that his driving licence was renewed a week before and he is even now working as autorickshaw driver. Under such circumstances, the Tribunal was perfectly justified in taking 4% disability for assessing compensation under the head, loss of earning capacity. Though the appellant claimed to be aged 54 years, he had not produced any document to prove this fact. In such circumstance, the Tribunal cannot be blamed for placing the appellant in the age group of 56 to 60 years. But, in view of the decision of the Supreme Court in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , the multiplier applicable to that age group is 9 and not 8 as taken by the Tribunal. If recalculation is made on this basis, the appellant will be entitled to get Rs. 12,960/- (3000 x 12 x 9 x 4%) instead of Rs. 11,520/- awarded by the Tribunal under the head, loss of earning capacity and we award the same under that head. He is having 8% whole body disability. That may effect his personal life and cause inconvenience in his personal life for the remaining period of his life. So considering this fact, we feel that the amount awarded by the Tribunal under the heads, loss of amenities in life, convenience etc. appears to be on the lower side and we enhance the same to Rs. 10,000/- from Rs. 5000/- awarded by the Tribunal. We do not find any reason to interfere with the amounts awarded by the Tribunal under the other heads as the amounts awarded by the Tribunal under the other heads are just and proper. In all, the appellant will be entitled to get an additional compensation of Rs. 6,440/- over and above what has been awarded by the Tribunal, which the 3rd respondent insurance company is liable to pay with 9% interest from the date of claim petition till date of payment. Two months'' time is granted to the insurance company to deposit this amount as well.

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