
(2014) 11 KL CK 0190
In the High Court Of Kerala
Case No : MACA No. 1653 of 2014

Vishnu raj

APPELLANT

Vs

Viraj

RESPONDENT

Date of Decision : 10-11-2014

Acts Referred:

Citation : (2014) 11 KL CK 0190

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

Bench : Division Bench

Advocate : George Varghese (Perumpallikuttiyl), A.R. Dileep and Manu Sebastian, Advocate for the Appellant; P.M.M. Najeel Khan and John Joseph Vettikad, Advocate for the Respondent

Judgement

T.R. Ramachandran Nair, J.—This appeal is filed by the claimant aggrieved by the lesser amount of compensation granted. As against the total claim of Rs. 1,75,000/- the Tribunal has granted an amount of Rs. 1,04,100/-.

2. The learned counsel for the appellant invited our attention to two aspects - first one is that the disability has not been assessed properly by the Tribunal. Ext. A11 disability certificate issued by the Medical College Hospital, Alappuzha that too by the Medical Board shows that 12% is the disability sustained by the appellant. But the Tribunal has lessened it to 9%.

3. The second and the main argument raised by the learned counsel is with regard to the multiplicand arrived at by the Tribunal. According to the learned counsel, now he is working as an Electrician and on that basis the compensation would have been assessed. It is also stated that a further increase of 50% wages will have to be taken for finally arriving at the multiplicand. The learned counsel for the Insurance Company submitted that the said approach is not correct and only the state of affairs as on the date of accident alone can be taken. Herein the evidence is that the appellant was a student aged 13 years at the time of the accident. Therefore, the learned counsel submitted that even though now the appellant is an Electrician, that factor cannot be reckoned for an assessment of

the multiplicand.

4. The learned counsel for the appellant cited the judgment of the Apex Court in Sanjay Kumar Vs. Ashok Kumar and Another, wherein the heads of damages to be awarded in personal injury matters have been explained.

5. We are of the view that the state of affairs as on the date of accident alone can be taken with regard to the age, occupation and the monthly income that may go into for an assessment of the multiplicand. But in the case of salaried employees as well as persons engaged in unorganised sectors, going by the various decisions of the apex court, for future prospects 50% more can be added towards the monthly income. As far as this case is concerned the appellant being a student at the point of time when the accident occurred, only a notional income can be taken. The Tribunal has taken the notional monthly income at Rs. 3,000/-. We are of the view that an amount of Rs. 3,500/- can be taken as the monthly income.

6. Apart from the same, we find that amount granted under different heads including bystander's expenses, loss of amenities and pain and suffering also requires modification.

7. The discharge card issued from the Medical College Hospital, Kottayam is marked as Ext. A5, which shows that fracture lateral condyle right, type-II epiphytial injury right "LE" position, head injury and "EDH" right are finally diagnosed. He was treated in the above hospital for a period of 18 days. The O.P tickets produced as Ext. A6 show the periodical review up to 28.10.2006 on four occasions.

8. The Tribunal has granted compensation in the following manner as evident from para.20 of the impugned award.

Sl. No.

Heads of claims

Amt.

1

Loss of studies

Rs. 2,500.00

2

Medical and miscellaneous expenses

Rs. 15,700.00

3

Bystander's expenses

Rs. 1,800.00

4

Transportation charges

Rs. 1,500.00

5

Extra nourishment

Rs. 3,000.00

6

Pain and sufferings

Rs. 20,000.00

7

Disability Income

Rs. 48,600.00

8

Loss of amenities

Rs. 10,000.00

9

Review

Rs. 1,000.00

Total

Rs.1,04,100.00

We refix the compensation in the following manner:

Sl. No.

Heads of claims

Amt.

1

Loss of studies

Rs. 2,500.00

2

Medical and miscellaneous expenses

Rs. 15,700.00

3

Bystander's expenses

Rs. 3,600.00

4

Transportation charges

Rs. 3,500.00

5

Extra nourishment

Rs. 3,000.00

6

Pain and sufferings

Rs. 30,000.00

7

Disability Income

Rs. 75,600.00

8

Loss of amenities

Rs. 15,000.00

9

Review

Rs. 1,000.00

Total

Rs.1,49,900.00

Therefore, in total an amount of Rs. 1,49,900/- (Rupees One lakh forty nine thousand nine hundred only) is awarded as compensation, which will carry interest @ 9% per annum. There will be a direction to the Insurance Company to deposit the amount within a period of three months (less the amount if any paid already) and on such deposit being made, the claimant can withdraw the amount.

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