(2022) 06 KL CK 0095

In the High Court Of Kerala

Case No : MACA NO. 1800 Of 2012

Vottu Raja APPELLANT

Vs

Abraham @ Regi, S/o Philipose RESPONDENT

Date of Decision : 08-06-2022

Acts Referred:

Citation : (2022) 06 KL CK 0095

Hon'ble Judges : A. Badharudeen, J

Bench : Single Bench

Advocate : Shiju Vargheese, Baby Thomas, Lal George, K.Anil Joseph, George T.J

Final Decision : Allowed

Judgement

A. Badharudeen, J

1. This appeal is at the instance of the claimant in O.P.(M.V) No.531/2008 on the file of Motor Accidents Claims Tribunal, Pala and the award dated 15.05.2012 in the above case is under challenge in this appeal. Respondents herein are the respondents before the Tribunal.

2. Heard both sides.

3. The appellant herein being a victim of motor accident had approached the Tribunal and claimed compensation of Rs.2,50,000/- from the respondents, attributing negligence against 1st respondent, the driver of the vehicle bearing registration No.KL-5/11-2925.

4. The Insurance Company filed written statement and resisted the claim, while admitting policy.

5. The Tribunal examined PWs.1 and 2 and marked Exts.A1 to A11 on the side of the appellant. Exts.B1 to B4 marked on the side of the respondents.

6. Thereafter, as against the claim of Rs.2,50,000/-, Rs.62,529/- awarded as compensation along with interest at the rate of 7.5% per annum. Recovery right

was given to the Insurance Company on finding that the 1st respondent had no driving license at the time of accident.

7. The learned counsel for the appellant highlighted inadequacy of the award on two specific grounds. According to him, though the appellant claimed his income at Rs.5,000/- per month, being a coolie worker, the Tribunal fixed Rs.3,000/- and the same is on the lower side.

8. Applying the ratio in Ramachandrappa v. Manager, Royal Sundaram Alliance Insurance Company Ltd. : (2011) 13 SCC 236, the monthly income claimed by the appellant at Rs.5,000/-is reasonable and, therefore, I re-fix the monthly income at Rs.5,000/- for the purpose of reassessing the compensation.

9. According to the learned counsel for the appellant, the appellant sustained fracture both bones right leg and he was subjected to internal fixation and removal thereof. Though the appellant produced Ext.A9 disability certificate before the Tribunal fixing 14% disability, the Tribunal fixed the same at 6%. According to the learned counsel for the appellant at least 10% disability ought to be fixed.

10. Per contra, the learned counsel for the Insurance Company would submit that there is no mal-union in this matter and the disability certificate is not issued by the Medical Board and the doctor, who authored Ext.A9 also was not examined. In such scenario, the Tribunal rightly fixed the disability at 6% and no more increase is warranted.

11. While appraising the rival submissions, I have perused Ext.A7, the discharge card. Ext.A7 would go to show that the appellant sustained open fracture both bones right leg, and he underwent treatment by internal fixation could be gathered. Therefore, I am inclined to fix the disability at 9% instead of 6% fixed by the Tribunal. The age and multiplier applied by the Tribunal are not in dispute.

12. The Tribunal granted Rs.3,000/- under the head 'loss of earnings' for one month alone. I am inclined to grant Rs.5,000/- as 'loss of earnings' for a period of three months. Thus, the appellant is entitled to get Rs.15,000/-. Accordingly, Rs.12,000/- more is granted under the head 'loss of earnings'.

13. Apart from that, taking monthly income @ Rs.5,000/-, the disability income also recalculated as under:

5000x12x16x9% = 86,400/-

Out of which, Rs.34,560/- was granted by the Tribunal. Thus, Rs.51,840/- more is granted under the head 'loss of disability income'.

14. Under the head 'pain and sufferings', the Tribunal granted Rs.10,000/- alone. I am inclined to increase the same by Rs.7,000/-more.

15. In the result, this appeal is allowed. It is held that the appellant is entitled to get Rs.1,33,360/- as compensation, out of which Rs.62,520/- was granted by the

Tribunal and the balance amount of Rs.70,840/- is granted as enhanced compensation with the same rate of interest awarded by the Tribunal, payable by the Insurance Company, from the date of petition till the date of deposit or realisation, excluding the period from 16.08.2012 to 15.11.2021, which was excluded by this Court in the matter of interest as per order dated 15.11.2021, while condoning the delay in filing this appeal.

16. As per the award amount, the learned Tribunal granted recovery right to the Insurance Company from the 1st respondent, on finding violation of policy conditions for want of driving licence to the driver of the offending vehicle. Therefore, it is specifically ordered that the Insurance Company can realise the entire award amount including the enhanced compensation along with interest from the 1st respondent, the insurer, immediately on deposit of the same before the Tribunal.

The Insurance Company is directed to deposit the same in the name of the appellant within two months from today and proceed to recover the same thereafter, as directed above.