Lazar vs Vinto

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Court : Kerala

Decided On : Feb-17-2022

Judge : Honourable Mrs. Justice M.R.Anitha

Appeal No. : MACA/1164/2013

Appellant : LAZAR

Respondent : VINTO

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MRS. JUSTICE M.R.ANITHA THURSDAY, THE 17TH DAY OF FEBRUARY 2022 / 28TH MAGHA, 1943 MACA NO. 1164 OF 2013 (AGAINST THE AWARD DATED 08.10.2012 MADE IN O.P.(MV) NO.1570/2006 ON THE FILE OF THE MOTOR ACCIDENTS CLAIMS TRIBUNAL, THRISSUR) APPELLANT/PETITIONER: LAZAR S/O.PAILOTH,RESIDING AT PUTHENPARAMBIL HOUSE, ST.RAPHEL STREET, KURIACHIRA PO, THRISSUR BY ADVS. SRI.T.C.SURESH MENON SRI.A.R.NIMOD RESPONDENTS/RESPONDENTS:

1 VINTO S/O.WILSON, RESINDING AT ARIMBOOR HOUSE, KECHERY PO, THRISSUR 680 501. 2 FINU BABU S/O.BABU.M.K,

RESIDING AT MADATHINGAL HOUSE, ST.MARY'S STREET, THRISSUR 680 001. 3 THE NATIONAL INSURANCE COMPANY LIMITED 2ND FLOOR, AMBILA ARCADE, M.G.ROAD, THRISSUR 680 001. BY ADV SMT.RAJI T.BHASKAR SMT RAJI.T.BHASKER-R3 THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 17.02.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The appellant is the claimant in O.P.(MV)

No.1570/2006 on the file of Motor Accidents Claims Tribunal, Thrissur. The claim petition has been filed under Section 166 of the Motor Vehicles Act, 1988 (in short the Act) claiming compensation on account of the injuries sustained by the appellant in a motor accident on 23.6.2006 at about 9.45 p.m., while the claimant was walking through Nehru Nagrar- Kuriachira public road, motorcycle bearing No.KL-8/S 617 ridden by the 2nd respondent hit the appellant, resulting in grievous injuries to him. The accident alleged to have occurred due to the rash and negligent driving of the motorcycle by the 2nd respondent. 1st respondent is the owner of the motorcycle and 3rd respondent is the insurer. Total compensation of

Rs.4,23,500/- has been claimed which is limited to Rs.3,50,000/-.

3. Before the Tribunal, 1st and 2nd respondents remained ex-parte.

4. The 3rd respondent/insurer filed written statement admitting the policy coverage with respect to the offending vehicle. The rashness and negligence on the part of the 2 nd respondent is denied. The compensation claimed under various heads are also disputed.

5. There was no oral evidence from either side. Exhibits

A1 to A8 were marked from the side of the claimant. Ext.B1 marked from the side of the 3rd respondent. Tribunal on evaluating the pleadings and evidence awarded compensation of Rs.1,33,200/- in total.

6. The compensation awarded by the tribunal under

various heads are as follows: Amount awarded Compensation allowed at different heads Rs. Loss of earning (Total) 9,000-00 Loss of earning (partial) Medical expenses 58,800 Miscellaneous Expenses Future treatment Bystander expenses 3,200-00 Transportation expenses 2,000-00 Extra nourishment Damage to clothing Amount awarded Compensation allowed at different heads Rs. Pain and suffering 18,000-00

Disability etc 25,200 Loss of earning power 17,000-00 Loss of amenities and inconvenience Total 1,33,200-00

7. Dissatisfied with the quantum of compensation awarded by the Tribunal under various heads, the claimant came up in appeal before this Court on various grounds stated in the memorandum of appeal.

8. Notice against 1st and 2nd respondent is dispensed

with at the risk of the appellant. 3 rd respondent appeared through Standing Counsel Adv.Smt.Raji T. Bhaskar. Lower court records were called for and perused. Both sides were heard.

9. The findings with respect to the negligence on the part of the 2nd respondent is not disputed. The only dispute is with regard to the quantum of compensation awarded by the Tribunal.

10. According to the learned counsel, the appellant/claimant (herein after be referred as claimant) was 61 years old at the time of accident and he was a fish vendor

and was having a monthly income of Rs.5,500/-. But, the Tribunal notionally fixed his income as Rs.3,000/- per month which is very low since the accident occurred in the year 2006.

11. In Ramachandrapa v. manager, Royal

Sundaram Alliance Insurance Company Limited [(2011) 13 SCC 236], the Hon'ble Apex Court notionally fixed the monthly income of a coolie in the year 2004 at Rs.4,500/-. It was held that a claimant working as coolie cannot be expected to produce any documentary evidence to substantiate their claim. It is also held that in the absence of any other evidence contrary to the claim made by the claimant, the Tribunal

should have accepted the claim of the claimant. It is also held

that in a given case if the claim made is so exorbitant or if the claim made is contrary to ground realities the Tribunal may not accept the claim and may proceed to determine the possible income by resorting to some guess work which may include the ground realities prevailing at the relevant point of time.

12. In Syed Sadiq v. Divisional manager, United

India Insurance Co. Ltd. [(2014) 2 SCC 735] Apex Court was dealing with an appeal which arouse out of an accident occurred on 14-08-2008. Claimant was a vegetable vendor aged about 24 years who sustained injury to the lower end to right femur and left upper arm and his right leg had to be amputated. Question arouse about his monthly income.

Following the principles in Ramchandrapa's case it was held

that there is no reason for the Tribunal and the High Court to ask for evidence of monthly income of the appellant/claimant. It is further found that going by the present state of economy and rising prices in agricultural products a vegetable vendor is reasonably capable of earning Rs.6,500/- per month.

13. Claimant in this case was 61 years at the time of accident and he is a fish vendor. So, as per the principles laid down in the above decisions, the monthly income of Rs.5,500/- claimed is quite reasonable and is hereby accepted.

14. The learned counsel also would contend that Exhibit A6 disability certificate certified 19.2% whole body disability. The disability certificate was produced and marked. But the Tribunal arbitrarily fixed the disability at 10%.

15. The learned counsel also would contend that no compensation was awarded towards extra nourishment and damage to clothing. Hence, seeks for award of compensation under those heads also.

16. The Standing Counsel for the insurer on the other

hand would contend that disability certificate-Exhibit A6 was marked subject to proof and no attempt was made by the claimant to examine by the doctor. The Tribunal rightly fixed the compensation at 10% and just and reasonable compensation has been awarded on all other heads and no interference is called for at the instance of this Court.

17. In Raj Kumar v. Ajay Kumar and Anr. [(2011) 1

SCC 343 : 2011 ACJ 1 : 2010 KHC 5021] the general principles relating to compensation in injury cases has been dealt with in detail and it has been held therein that the provision of the Motor Vehicles Act, 1988, makes it clear that the award must be just, which means that compensation

should, to the extent possible, fully and adequately restore the claimant to the position prior to the accident. The object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. The court or Tribunal shall have to assess the damages objectively and exclude from

consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences, is inevitable. It is also held that a person is not only to be compensated for the physical injury, but also for the loss which injured has suffered as a result of such injury.

18. In personal injury cases, heads under which the compensation is awarded has been classified into two as pecuniary damages (Special damages) and non pecuniary damages (general damages).

19. In paragraph No.5 the heads coming under

pecuniary damages and non pecuniary damages have been discussed. In personal injury cases, compensation would be awarded only under the heads ie, expenses relating treatment,

hospitalization, medicine, transportation nourishing food and miscellaneous expenditure and loss of earning during the period of treatment as well as damages for pain, suffering and trauma as a consequence of the injuries. In cases of serious injuries, where there is specific medical evidence corroborating evidence of the claimants, the compensation would be granted under the heads loss of earning (and other gains) which the

injured would have made had he not been injured, comprising : - Loss of future earnings on account of permanent disability, Future medical expenses, Loss of amenities (and/or loss of prospects of marriage) and Loss of expectation of life (shortening of normal longevity). The assessment of non pecuniary damages under the damages for pain, suffering and trauma, loss of amenities and loss of expectation of life involves determination of lump sum amounts with reference to

circumstances such as age, nature of injury/deprivation/disability suffered by the claimant and the effect thereof on the future life of the claimant.

20. The claimant undergone inpatient treatment at Elite

Mission Hospital, Koorkkenchery, for 16 days. Injuries sustained by the claimant are Lacerated would below left elbow, long posterior aspect of middle forearm left, extensor muscle are partially cut, multiple abrasion left knee, flexor muscles cut.

21. Exhibit A5 discharge summary would prove that the

diagnosis as Brachial Artery, Ulnar Nerve, Median Nerve, Post anterossum nerve injuries-Lt.Elbow and Compound fracture of Left patella. Wound exploration done/GA. Brachial artery repaired. Ulnar nerve median nerve and posterior interosseus nerve repaired. All the flexor muscles and extensor muscles repaired. POP slab given. Partial Patellectomy done.

22. In the present case, the claimant had undergone 16

days inpatient treatment. The grievous nature of injuries and procedures undergone by the claimant at hospital has also been described above. In Raj Kumar the Apex Court has also

held that the Tribunal may invariably make it a point to require

the evidence of the doctor who treated the injured who assess

the permanent disability. It is also held that if the Tribunal is not satisfied with the medical evidence produced by the claimant, it can constitute a medical board and refer the claimant to such medical board for assessment of the disability. So, without adopting that procedure the Tribunal is not justified in reducing the percentage of disability to 10% from 19.2% fixed by the Doctor. However, Exhibit A6 disability certificate was marked subject to proof. So, taking into account the nature of injuries and the period of treatment undergone by the claimant the permanent whole body disability is fixed as 15% instead of 10% adopted by the Tribunal. So, towards the future loss of earnings power the claimant is entitled to get Rs.69,300/- (Rs.5,500x12x7x15/100). Deducting the amount already awarded by the Tribunal the claimant is entitled to get Rs.44,100/- (Rs.69,300-25,200).

23. In view of the nature of injuries and the procedures

of treatment undergone by the claimant, loss of earnings for 3 months awarded by the Tribunal is seems to be proper and can be maintained. Hence, towards loss of earnings the claimant

is entitled to get Rs.16,500/- (Rs.5,500x3). Deducting the amount already awarded, the balance could be Rs.7,500/- (Rs.16,500-9,000). No amount seems awarded towards extra nourishment. The claimant had been under inpatient treatment for 16 days. So, Rs.1,500/- is awarded towards extra nourishment. An amount of Rs.500/- is also awarded towards damage to clothing. So the claimant is entitled for the enhanced compensation of Rs.53,600/- (Rs.44,100 + 7,500 + 1,500+500).

24. In the result, the appellant/claimant is allowed to

realise enhanced compensation of Rs.53,600/- (Rupees fifteen thousand six hundred only) in this appeal, which will carry interest at the rate of 7.5% per annum from the date of petition on 29.7.2006 till realisation excluding 99 days, the delay caused in filing this appeal. The 3 rd respondent is directed to pay the additional compensation granted in this appeal, together with interest, within a period of two months from the date of receipt of certified copy of this judgment.

The appellant shall provide the Bank account details (attested copy of relevant page of bank pass book, Bank Account number and IFSC code of the branch) before the Tribunal with a copy to the learned Standing Counsel for the insurer, within one month from the date of receipt of certified copy of this judgment. There will be no order as to costs. Sd/- M.R.ANITHA JUDGE SMF