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Thomas vs Saju T.J.

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Court : Kerala

Decided On : Jun-30-2022

Judge : Honourable Mr. Justice a. Badharudeen

Appeal No. : MACA/1042/2011

Appellant : Thomas

Respondent : Saju T.J.

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A. BADHARUDEEN THURSDAY, THE 30TH DAY OF JUNE 2022 / 9TH ASHADHA, 1944 AGAINST THE JUDGMENT DATED 31.12.2020 IN OPMV.NO.370/2007 OF MOTOR ACCIDENTS CLAIMS TRIBUNAL, IRINJALAKUDA APPELLANT/PETITIONER: THOMAS, S/O.CHAKKAPPAN, MECHERY HOUSE, MELOOR DESOM, MELOOR VILLAGE, MELOOR.P.O, MUKUNDAPURAM TALUK, THRISSUR DISTRICT. BY ADVS. SRI.P.V.BABY SRI.A.N.SANTHOSH RESPONDENTS/RESPONDENTS:

1 SAJU T.J., S/O.USEPH, THIRUTHANNATHY HOUSE, MANJAPRA.P.O, ERNAKULAM DISTRICT - 683 581. 2 THE NEW INDIA ASSURANCE CO. LTD. ANGAMALY.P.O, ERNAKULAM

DISTRICT - 683 572. BY ADV SRI.JOHN JOSEPH VETTIKAD THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY ON 30.06.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J U D G M E N T

The petitioner in O.P.(MV).No.370 of 2007 on the file of Motor Accidents Claims Tribunal, Irinjalakuda, is the appellant herein and he assails award dated

2. Heard the learned counsel for the appellant as well as the learned counsel appearing for 2 nd respondent - Insurance Company.

3. Brief facts of the case are as follows; On 05.01.2007 at 12.15 p.m., while the appellant was riding a motor cycle bearing registration No.KL-8/AD 529 through Thrissur-Ernakulam, the 1 st respondent driven a tempo bearing registration No.KL-7/P-4048 in a rash and negligent manner and hit against the appellant's motor cycle. As a result, he was thrown away on the road and sustained serious injuries. 1 st respondent was the owner-cum-driver and the 2 nd respondent was the insurer of the tempo.

4. The 1st respondent remained exparte. The 2 nd respondent filed written statement, admitting the insurance policy. But the claim under various heads zealously opposed.

5. The Tribunal recorded the evidence. Exts.A1 to A5 marked on the side of the appellant. Ext.B1 marked on the side of the respondent.

6. On appreciation of the evidence, the Tribunal granted Rs.30,040/- along with 7% interest as against the claim of Rs.1,84,260/-.

7. The learned counsel for the appellant canvassed

enhancement of compensation on two specific grounds. According to him, the Tribunal fixed the monthly income at Rs.2,000/-, though Rs.16,000/- was claimed as the

income of the appellant. According to the learned counsel, following the ratio in [(2011) 13 SCC 236] Ramachandrappa v. Manager, Royal Sundaram Alliance Insurance Company Ltd., Rs.6,000/- ought to be fixed as the monthly income. This legal aspect is not in dispute at the instance of the counsel for the 2 nd respondent.

Therefore, for recalculating 'loss of earnings' and 'loss of disability income', the monthly income of the appellant is fixed at Rs.6,000/-.

8. The second point argued by the learned counsel

for the appellant is insufficient disability fixed by the Tribunal. According to the learned counsel, the Tribunal accepted only 2% disability despite the fact that as per Ext.A6 disability certificate issued by Dr.Jose Kurian Kattukaran dated 12/06/2009, 10% disability was assessed. Therefore, the learned counsel pressed for fixing disability as such or enhancement of disability to a reasonable sum, considering the injuries and treatment underwent by the appellant.

9. Enhancement of the percentage of disability is opposed by the learned counsel for the 2 nd respondent would submit that no serious injury sustained and

injuries confined to two ligaments. As per Ext.A4 discharge summary issued from Medical Trust Hospital, Kochi no fracture either diagnosed or treated. It was observed that diagnosed as a case of ACL+LCL Injury (L) knee and treated in the form of Long leg cast (L) knee now admitted for physio mobilization. In the disability

certificate, it was stated that the petitioner had lateral collateral ligament injury. In view of the above medical examination, 10% disability appears to be on higher side. Anyhow, I am inclined to increase the same by 5% and the 'loss of disability income' is recalculated as under: Rs.6000x12x13x5/100=46,800

10. Out of which 6,240/- was granted by the Tribunal Rs.46,800-6240=Rs.40,560/- more is granted under the head 'loss of disability income'.

11. The Tribunal granted 'loss of earnings' for a period of three months at the rate of Rs.2000/- and the same is enhanced as under: 6000x3=Rs.18000/-

12. Out of which Rs.6000/- was granted by the Tribunal Rs.18000-6000= Rs.12,000/- more is granted under the head 'loss of earnings'.

13. On other heads, the Tribunal granted

reasonable compensation and therefore, I am not inclined to increase the same further. In the result, this appeal stands allowed. It is ordered that the appellant is entitled to get Rs.82,600/- as compensation, out of which Rs.30,040/- was granted by the Tribunal and the balance of Rs.52,560/-(Rs.40,560+Rs.12,000) is granted as enhanced compensation with the same rate of interest awarded by the Tribunal, payable by R1 and R2, from the date of petition till the date of deposit or realisation, excluding interest for a period of 42 days specifically excluded by this Court while allowing the delay petition-C.M.Appl.No.1 of 2011 (1616/2011) as per the

order dated 20.10.2021 while condoning the delay in

filing this appeal. Insurance Company is directed to deposit the same in the name of the appellant within two months from today. On deposit, the appellant can release the same. Sd/- A. BADHARUDEEN, JUDGE AS

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