

Balakrishnan H. Vs. The Manager

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Court : Kerala

Decided On : Mar-24-2015

Judge : Honourable Mr.Justice T.R.Ramachandran Nair

Appellant : Balakrishnan H.

Respondent : The Manager

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR & THE HONOURABLE SMT. JUSTICE P.V.ASHA TUESDAY, THE 24TH DAY OF MARCH 2015 3RD CHAITHRA, 1937 MACA.No. 1059 of 2013 ()
----- AGAINST THE AWARD IN OPMV5442009 of MACT,KASARAGOD DATED 11-09-2012 APPELLANT(S)/PETITIONER:
----- BALAKRISHNAN H. AGED 42 YEARS S/O NARKALAN, RESIDING AT PAYYANGANAM KUTTIKOLE VILLAGE, KASARAGOD TALUK KASARAGOD DISTRICT. BY ADV. SRI.M.V.AMARESAN RESPONDENT(S)/RESPONDENT NO.3:
----- THE MANAGER RELIANCE GENERAL INSURANCE COMPANY LTD. 570 NAIGUM CROSS ROAD NEXT TO ROYAL INDUSTRIAL ESTATE, VADALA WEST MUMBAI 400031. R BY SRI.GEORGE CHERIAN (THIRUVALLA) THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 24-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: T.R. RAMACHANDRAN NAIR & P.V. ASHA, JJ.

----- Dated this the 24th day of March, 2015

JUDGMENT

Ramachandran Nair, J.

The appellant is the injured in a motor vehicle accident which occurred on 8.5.2009. O.P.(MV) No.544/2009 before the Motor Accidents Claims Tribunal, Kasaragod was filed by him claiming compensation for the personal injuries sustained as well as for the permanent disability which was assessed at 45%.

2. The accident occurred while he was riding motor cycle bearing Reg. NO.KL-14D-1579 through N.H.

17. When it reached a place called Cherumba in Panayil Village, a lorry bearing Reg. No.KL-11AA-1948 driven by the first respondent hit the motor cycle. He was thrown on the road and sustained injuries.

3. The appellant was treated initially in Carewell Hospital, Kasaragod and thereafter was taken to Unity Health Complex, Mangalore as an inpatient till 8.6.2009. His right arm and third toe MACA10592013 2 were amputated in a major surgery.

4. Learned counsel for the appellant submitted that the compensation awarded by the Tribunal at Rs.5,02,500/- is inadequate. According to the learned counsel, going by the disability certificate, it is noted as 87.4% permanent loco motor impairment in relation to his right upper and lower limbs. The said certificate has been marked as Ext.A6 which was issued by the Kasaragod District Medical Board. The whole body disability has been assessed at 44%.

5. In calculating permanent disability, the Tribunal has fixed the monthly income of the appellant at Rs.4,000/- notionally, observing that he has not lost his salary and is still in service. the above method is under vehement attack by the learned counsel for the appellant, whereas learned counsel for the insurance company submitted that since he has not lost his job and the earning capacity has not been

reduced, only a notional income can be taken.

6. In a case like this, where physical injuries have been suffered by a person, the same is liable to be compensated and in various judgments of the Apex Court, the legal principles have been discussed MACA10592013 3 in detail. We refer to K. Suresh v. New India Assurance Company Ltd. and another {(2012) 12 SCC274 wherein the Apex Court followed the principles stated in Ramesh Chandra v. Randhir Singh (JT1990(2) SC579 and Kothandapani v. Tamil Nadu State Transport Corporation Ltd. (JT2011(6) SC307. In {(2012) 12 SCC274 it was held that "even if compensation is granted for permanent disability, compensation can be granted for loss of earning capacity and loss of future earnings." It was also held that the multiplier method can be adopted as evident from the judgment in Sarla Verma v. Delhi Transport Corporation (2010 (2) KLT802- SC).

7. Herein, we cannot accept the method adopted by the Tribunal by fixing a notional income. Evidence is to the effect that the appellant was having a monthly salary of Rs.16,864/- from his job as a teacher in a Government school. The compensation assessed by the Tribunal is clear from paragraph 17 of the award which we reproduce below:

Head of claim	Amount awarded by the Tribunal
Loss of earning	10000
Transportation expenses	2000
Head of claim	Amount awarded by the Tribunal
Extra nourishment	3000
Damage to clothing	1000
Medical expenses	113700
Bystander expenses	6000
Pain and suffering	30000
Permanent disability	316800
Loss of amenities and enjoyment in life	20000
Total	502500

It is submitted by the learned counsel for the appellant that for loss of earning, only a sum of Rs.10,000/- has been granted, whereas the appellant was on leave for three months. This is evident from Ext.A5. The Tribunal did not grant the same, since it is noted that it was summer vacation. But the Tribunal, considering the period of hospitalisation and amputation of right arm, awarded a sum of Rs.10,000/- towards compensation for loss of earning. Having regard to the evidence before us, we enhance the same to Rs.20,000/-.

8. As far as transportation expenses are concerned, evidently, the appellant was treated in Unity Health Care, Mangalore which is in the State of Karnataka. Therefore, a reasonable amount ought to have been granted by the Tribunal. It is

clear that he had to attend reviews also MACA10592013 5 after the initial period of treatment. In fact, Ext.A3 wound certificate showed that he has crush injury to right forearm and degloving injury. The right arm and third toe of right foot were amputated. Therefore, we grant an amount of Rs.6,000/- towards transport to hospital. The Tribunal granted a sum of Rs.3,000/- towards extra nourishment, which we confirm. As far as bystander's expenses is concerned, the Tribunal has granted Rs.6,000/- which also is reasonable. Going by the medical bills produced, the Tribunal has granted a reasonable amount. For pain and suffering, an amount of Rs.30,000/- is awarded. In the light of the fact that he had sustained very serious injuries and had to undergo one surgery and amputation was also done, we fix an amount of Rs.40,000/- towards compensation for pain and suffering. As far as permanent disability is concerned, it is true that the appellant is not having any loss of earning capacity. There can be different methods for computation as far as this item of compensation is concerned. The question will be whether the claimant will be entitled for the total amount by reckoning the entire percentage of disability in tune with the monthly salary he is having. The decision relied upon by us above MACA10592013 6 will show that the multiplier method can be adopted. But considering the fact that his earning capacity will not be affected, the amount awarded should be for pain and suffering, for loss of amenities and enjoyment in life and for permanent disability suffered. Therefore, the compensation for permanent disability will be at Rs.11,65,995/- ($14395 \times 12 \times 15 \times 45/100$), if multiplier method is adopted for calculation.

9. The aspect highlighted by the learned counsel for the insurance company is that the above amount will represent actually the loss of earning capacity which is absent here. We grant an amount of Rs.10 lakhs towards compensation for permanent disability, instead of Rs.11,65,995/-, after assessing various aspects. But as far as loss of amenities and enjoyment in life is concerned, the appellant is totally disadvantaged to use his right hand and is deprived of use of right toe which will affect his free movements. The same will be lifelong and adequate compensation will have to be granted. Therefore, we grant an amount of Rs.1 lakh towards loss of amenities and enjoyment in life. Therefore, the total compensation will be recomputed as follows: MACA10592013 7 Head of claim Amount Modified awarded by the award passed Tribunal by this Court Loss of earning 10000 20000

Transportation expenses 2000 6000 Extra nourishment 3000 3000 Damage to clothing 1000 1000 Medical expenses 113700 113700 Bystander expenses 6000 6000 Pain and suffering 30000 40000 Permanent disability 316800 100000 Loss of amenities and enjoyment in life 20000 100000 Total 502500 1289700 (Rupees Twelve lakhs eighty-nine thousand and seven hundred only) The enhanced amount of compensation will carry interest at 9% per annum from the date of petition till realisation and the insurance company is directed to deposit the entire amount of compensation less the amount already deposited before the Tribunal, within three months. The appeal is allowed as above. The parties will suffer their costs in the appeal. (T.R. RAMACHANDRAN NAIR, JUDGE.) (P.V. ASHA, JUDGE.) kav/

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