Ouseph Vs. Antony and ors.

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SooperKanoon Citation : sooperkanoon.com/727316

Court : Kerala

Decided On : Feb-17-1989

Reported in : II(1990)ACC54; 1990ACJ57

Judge : P.C. Balakrishna Menon and ; P. Krishnamoorthy, JJ.

Appeal No. : M.F.A. No. 622 of 1983

Appellant : Ouseph

Respondent : Antony and ors.

Advocate for Def. : S. Parameswaran and; K.N. Narayana Pillai, Advs.

Advocate for Pet/Ap. : M.M. Abdul Aziz and; M.M. Meeran, Advs.

Disposition : Appeal allowed

Judgement :

P. Krishnamoorthy, J.

1. This appeal by the claimant arises out of an application under the Motor Vehicles Act, for compensation on account of personal injuries suffered by him in a motor accident. The accident occurred on 3.11.1980 at 7.30 p.m. while the claimant was riding on his cycle from Iringole to Perumbavoor. While he was riding on the cycle, a jeep KLF 3070 belonging to the 1st respondent and driven by the

2nd respondent came from the opposite direction in a rash and negligent manner and hit the cycle. Consequently, the claimant suffered injuries on his head, cheek and nasal bones. He also lost all his teeth. He was treated by Dr. Subba Rao, Neuro Surgeon in the Medical Trust Hospital, Ernakulam, as an inpatient for 22 days from 4.11.1980. He claims that he is totally disabled. He made a total claim of Rs. 4,37,400/-under various heads but limited the compensation to Rs. 1,00,000/-. The 3rd respondent is the insurance company who is the insurer of the jeep in question.

2. Respondent Nos. 1 and 2 contested the petition disputing the rashness and negligence alleged by the petitioner-claimant and also questioned the quantum of compensation. The 3rd respondent, insurance company, admitted the existence of a valid insurance policy but questioned its liability and also contended that its liability should be limited to Rs. 50,000/-.

3. After trial the Tribunal held that the accident was the result of the negligent driving by the 2nd respondent. On the question of compensation the Tribunal awarded a sum of Rs. 30,000/- as compensation for the injuries, pain and suffering, disability and loss of earning power and made respondent Nos. 1 to 3 liable to pay the amount.

4. The appeal is by the claimant against the above award. There is no challenge to the finding regarding the rash and negligent driving of the 2nd respondent in this appeal and so, the only question for determination is whether the compensation awarded by the Tribunal is sufficient in the circumstances of this case.

5. We feel that the compensation awarded by the Tribunal is quite inadequate in the circumstances of this case. The claimant was only 35 years of age at the time of the accident and he was a head load worker. Exh. A- I, the certificate issued by PW1, the Neuro Surgeon who treated him, shows that the claimant has difficulty in talking, eating and hearing. It further says that his face is disfigured and that he is permanently unable to work as a head load worker. Exh. A-2 is the certificate showing the injuries suffered by the claimant. The evidence in the case further shows that he was treated as an inpatient in the hospital for 22 days.

6. The counsel for the appellant-claimant stressed before us his claim for compensation under three heads, namely, (1) medical, (2) pain and suffering and disfigurement of the face, and (3) loss of earning capacity. For proving the medical expenses he has produced Exh. A-6 series, the prescriptions and bills for the medicines and other treatment undertaken by him, which shows that he has incurred an expenditure of Rs. 7,760/-. Naturally he would have incurred some expenses also in connection with the treatment and on the whole we are inclined to grant him an amount of Rs. 8,000/- towards medical expenses and other incidental expenses.

7. The claimant was in the hospital for 22 days and he underwent an operation also. He lost all his teeth and according to the doctor's evidence and the certificate issued by him, there is disfigurement of his face also. Though the damage on these heads cannot be fixed with any arithmetical precision, we feel, in the circumstances of the case, that an amount of Rs. 10,000/- will be adequate compensation under the above head.

8. Coming to the question of loss of earnings, the claimant as PW2 has given evidence that he was a head load worker earning Rs. 40/-per day and that he used to get work on all days excepting Sundays. The doctor's evidence is to the effect that though he will not be able to continue his work as a head load worker, there is no disability for him to do some other type of work. The petitioner-claimant has produced Exh. A-7, certificate dated 27.1.1983, which is after the accident, showing his annual income as Rs. 4,800/-. This shows that even after the accident he was earning. We are fixing the compensation on this head taking into account all these aspects. As stated earlier, the evidence of the claimant is to the effect that he used to earn a daily wage of Rs. 40/- on all days excepting Sundays. Being a person not having a permanent job, his annual income can be fixed at Rs. 10,000/-. Exh. A-7, certificate produced by him, shows that his present income is Rs. 4,800/- and the loss of earning is Rs. 5,200/- per annum, which is the direct result of the accident. In these circumstances, Rs. 5,200/- can be fixed as the multiplicand. Taking into account the fact that he is not having a permanent job and that his capacity to work and consequently his income also may increase with time, a multiplier of 10 can be applied for fixing the loss of earning capacity. On the

above basis, we award an amount of Rs. 52,000/- to the claimant towards loss of income due to his permanent partial disability. Thus, on the whole, the claimant will be entitled to a total compensation of Rs. 70,000/-.

9. The 3rd respondent insurance company contended that in any event they are liable only to pay the amount as is fixed under Section 95 of the Motor Vehicles Act and that even if any amount above that is granted, their liability must be restricted to the statutory liability under the Act, which is Rs. 50,000/- in this case. The insurance company has not chosen to produce the policy nor to adduce any evidence to show that their liability is limited to the statutory liability. We have held in our judgment dated 2.2.1989 in M.F.A. No. 591 of 1983 that it is the duty of the insurance company in such circumstances to plead and prove that the liability in respect of the vehicle in question is limited to the statutory liability and nothing more. As the insurance company has not discharged its burden by either producing the policy or adducing any other evidence to that effect, we hold that the insurance company (3rd respondent) also is liable to pay the entire amount due under this award.

10. The Tribunal in this case has awarded only 6 per cent interest on the amount awarded from 7.11.1981, i.e., the date of filing of the petition. We feel that the rate of interest awarded is too low and the claimant-appellant is entitled to an interest at the rate of 10 per cent from the above date.

11. In the result, we allow the appeal and modify the award of the Tribunal by granting the appellant an award for recovery of Rs. 70,000/- with 10 per cent interest from 7.11.1981 till realisation, from respondent Nos. 1 to 3. We make no order as to costs.