Chacko Vs. Abdul Rahiman

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SooperKanoon Citation : sooperkanoon.com/727708

Court : Kerala

Decided On : May-28-2004

Reported in : I(2005)ACC318; 2005ACJ1147; 2004(3)KLT1007

Judge : J.B. Koshy and; K. Thankappan, JJ.

Acts : Motor Vehicles Act, 1988 - Sections 168

Appeal No. : M.F.A. No. 1142 of 2000

Appellant : Chacko

Respondent : Abdul Rahiman

Advocate for Def. : K.P. Sudheer and; K.K.M. Sherif, Advs.

Advocate for Pet/Ap. : P.G. Parameswara Panicker and; A. Santheep, Advs.

Judgement :

J.B. Koshy, J.

1. Appellant/petitioner was knocked down by a motor cycle driven by the first respondent while standing by the road side at around 10 hours on 28th November, 1995 and he sustained injuries. The injuries sustained by the appellant are: compound fracture (R) humerus; comminuted fracture (R) II, III, IV metacarpals of right leg; trochanteric fracture (R) femur; supracondylar fracture (L) femur; 8th rib

fracture on the right side; abrasion over both knees; lacerated wound 4 cm. over (L) thumb and lacerated wound 8 cm. long lateral aspect of right thigh. He claimed that he was doing the business of manufacturing and selling country bricks and getting Rs.3,000/- per month. Even though the Tribunal found that there was valid insurance, contributory negligence at 10 per cent was fixed on the claimant and balance alone was directed to be deposited by the Insurance Company. Tribunal awarded a total compensation of Rs. 1,53,180/- against the claim for Rs.3,91,500/-. Finding of contributory negligence and calculation of compensation are disputed in this appeal.

2. The Tribunal found that statement in the claim petition that he was hit by the motor cycle driven by the first respondent while standing on the road side is incorrect. During cross-examination the claimant himself had admitted that after getting down from the bus he was crossing the road. Therefore, 10 per cent negligence was attributed on him. There was no evidence to show that he was standing on the road side at the time of accident. He was crossing the road without looking whether other vehicles are coming. But only 10 per cent contributory negligence was fixed on the appellant. It is true that the respondents have not filed any appeal. Therefore, we are not interfering with the same. In any event, the above finding of contributory negligence cannot be interfered with at the instance of the appellant claimant.

3. With regard to assessment of monthly income, no evidence was adduced by the appellant to show that he was doing the business of manufacturing and selling country bricks. There is no material to show that he was getting Rs.3,000/- per month. According to the appellant, he was aged 55 at the time of accident. The Tribunal had assessed the monthly income at Rs. 1,500/- in the absence of any material. In the absence of any material we are not disturbing with the assessment of monthly income of the appellant by the Tribunal at Rs. 1,500/-. The compensation was not calculated on the basis of Second Schedule. Even if Second Schedule is taken as guidance, since he has completed the age of 55, the multiplier is only eight. But if he was below 55 (exact age is not proved) eleven is the multiplier. Medical certificate produced by the appellant shows that there is 31 per cent disability. If that be so, compensation payable for 31 per cent disability

(even if the medical certificate is accepted) will be Rs. 1,500 x 12 x 31/100 x 11 = Rs.61,380. The Tribunal has awarded Rs.20,000/- as in j ury compensation and Rs.55,000/- as compensation for disability. Thus totally Rs.75,000/- was granted. This is above the amount as per Second Schedule. Therefore, there is no need to interfere in the compensation awarded for disability and consequent loss of earning power. It is true that he has fractures and internal fixation and he has suffered pain. The Tribunal has granted Rs.19,000/- for pain and suffering, Rs.15,000/- for shortened expectation of life and Rs. 10,000/- for loss of amenities in future life. With regard to medical bill, an amount of Rs.26,000/- was allowed and another Rs.7,200/- was allowed for other hospital expenses. For transportation to hospital etc. Rs.2,000/- was awarded. Apart from the above, for attendant charges and extra nourishment charges, another Rs.2,500/- was allowed. The total compensation calculated was Rs. 1,70,200/-. Thereafter 10 per cent of the above was deducted for contributory negligence. We see no ground to interfere in the amount as reasonable compensation was granted in all heads. But no amount was awarded for future medical expenses. It is the contention of the appellant that he is still undergoing treatment as there was infection. The Orthopaedician of Valluvanad Hospital, Ottapalam when examined has proved that he underwent four major surgeries for containing the fracture injury of right humerus. But it still remains ununited and infected. It is contended that still there is infection, treatment is being continued. In the above circumstances, we are of the opinion that another Rs. 10,000/-sholild have been awarded for future medical expenses. After deducting 10 per cent for the negligence of the appellant, balance Rs. 9,000/- should be deposited by the second respondent Insurance Company over and above the amount of compensation and interest already awarded by the Tribunal. The second respondent should deposit the same with 9 per cent interest from the date of application till its deposit, within three months from the date of receipt of a copy of this judgment. On deposit of the amount the appellant is allowed to withdraw the same.

The appeal is allowed partly.