

Pradeep Vs. P.V. Mathai and Others

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Court : Kerala

Decided On : Jul-07-2011

Judge : R. Basant & N.K. Balakrishnan

Appeal No. : MACA.No. 2004 of 2009-F

Appellant : Pradeep

Respondent : P.V. Mathai and Others

Judgement :

BASANT, J.

Claimant is the appellant. He claimed compensation for personal injuries suffered by him in a motor accident, which occurred on 27.12.1999. The 3rd respondent insurer was made liable. Against a claim of Rs.12 lakhs, an amount of Rs.6,67,200/- was ordered to be paid along with interest at 6% per annum and proportionate cost.

2. The appellant/claimant claims to be aggrieved by the impugned award. It is unnecessary for us to advert to the chequered previous history of this case. It was once allowed by the Tribunal. In appeal before this Court by the claimant/appellant, the matter was remanded back. The impugned award was passed subsequently after remand.

3. The Tribunal awarded an amount of Rs.6,67,200/- as per the details shown below:

i) Pain and suffering : Rs. 20,000.00

ii) Medical expenses : Rs. 28,600.00 +

Additional Medical Expenses : Rs. 11,600.00

iii) Bystander's expenses : Rs. 15,200.00 (152 X 100)

iv) Transport to hospital : Rs. 3,000.00

v) Loss of earning : Rs. 18,000.00 (4 X 4,500)

vi) Loss of amenities : Rs. 20,000.00

vii) Loss of earning capacity : Rs.5,50,800.00

(4,500 X 12 X 60/100 X 17)

Total : Rs.6,67,200.00

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4. The appellant/claimant claims to be aggrieved by the impugned award. What is his grievance? The learned counsel for the appellant enumerates the grievances as follows:

i) The multiplier 17 adopted by the Tribunal while ascertaining the compensation payable for loss of earning capacity is incorrect. 18 should have been adopted.

ii) While ascertaining the multiplicand, the Tribunal did not realistically take into account the future prospects of economic improvement;

iii) The amount awarded under the head of loss of amenities is painfully low;

iv) Interest ought to have been awarded at least @ 7.5% per annum. This was not done in spite of the observations of this Court when the matter was remanded.

5. The claimant was a soldier in the Infantry Wing of the Indian Army. His net pay for the month as per his salary certificate Ext.A16 produced by him was Rs.4,090/- . The Tribunal reckoned Rs.4,500/- as the multiplicand. He was aged 22 years and the Tribunal reckoned the multiplier as 17. Before this Court a document has been produced along with I.A.No.1777 of 2011, which shows that while the pay commission report implemented, if the appellant had continued in service, his present salary would have been several folds higher.

6. We have heard the learned counsel for the appellant and the learned counsel for the insurance company. We proceed to consider the 4 points specifically raised.

7. Point No.(i)

The Tribunal had reckoned the multiplier as 17. The second schedule to the Motor Vehicles Act, which can safely be adopted as guidelines while ascertaining the multiplier in the case of permanent disablement suffered shows that for persons aged 20-25 years, 17 is the proper multiplier. The learned counsel relies on the observations in *Sarla Verma v. Delhi Transport Corporation* [2009 ACJ 1298 (SC)] to contend that 18 should have been adopted as the multiplier. 18 is seen adopted as the multiplier in the case of death in schedule 2. In any view of the matter we are satisfied that adoption of 17 by the Tribunal does not warrant appellate interference at our hands.

Point No.(i) is answered against the appellant.

8. Point No.(ii)

As indicated earlier, Rs.4,090/- was the net monthly income of the appellant at the time of the accident. After remand, the Tribunal reckoned Rs.4,500/- as the multiplicand. The Tribunal was evidently satisfied that a higher multiplicand must be adopted than what is shown in Ext.A16. Our attention has been drawn to para.24 of *Sarla Verma* (supra), which shows that for persons aged below 40

years, it is only reasonable that a higher multiplicand is to be taken into reckoning than the actual salary on the date of the accident. Sarla Verma is also authority for the proposition that 50% can be reckoned as the maximum provision for future improvement in salary. In the instant case, the materials presently placed before us convincingly persuade us to hold that a reasonably higher multiplicand must have been reckoned. We are satisfied in the facts and circumstances of this case that Rs.6,000/- can safely be reckoned as the multiplicand applicable. The challenge on point No.(ii) succeeds to the above extent.

9. Point No.(iii)

For loss of amenities, only an amount of Rs.20,000/- is seen awarded as compensation. We must look at the nature of the permanent disablement. Right hand of the appellant has practically become non functional. The Tribunal has recorded its observations in the impugned award. It is true that compensation has been awarded reckoning the permanent disability to be 60% - above 50%. The learned counsel for the insurance company placing reliance on precedents contends that when the percentage of reduction in earning capacity is fixed above 50%, the amount of compensation awarded under the head of loss of amenities need only be a token amount. We are inclined to agree with that. Even when the Court stipulates only a token amount, such stipulation must have a bearing on the nature of deprivation of quality of life arising from the accident and consequent disability. In the facts and circumstances of this case, we are satisfied that Rs.35,000/- can safely be fixed as the quantum of compensation payable for the loss of amenities. Point No.(iii) is answered in favour of the appellant to the above extent.

10. Point No.(iv)

Interest has been awarded only @ 6% per annum in spite of the observations by this Court when the matter was earlier remanded that 7.5% is the minimum bank rate of interest on the date of the award. We are satisfied taking into all the relevant inputs that now 7.5% can safely be awarded as the interest payable. Point No(iv) is also thus answered in favour of the appellant to the above extent.

11. On the above discussions, it follows that the appellant is entitled to the following further amounts as compensation.

i) Loss of earning : Rs.7,34,400.00

(6000 X 12 X 60 X 17/100)

minus 5,50,800 =

: Rs.1,83,600.00

ii) Loss of amenities : Rs. 15,000.00

(35,000 minus 20,000)

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Total Rs.1,98,600.00

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12. In the result:

a) This appeal is allowed in part;

b) We hold that the appellant is entitled to receive from the respondents a further amount of Rs.1,98,600/- (Rupees One lakh ninety eight thousand and six hundred only) in addition to the amounts already awarded by the Tribunal with interest on the entire amount @ 7.5% per annum from the date of the claim petition to the date of payment/deposit along with proportionate cost;

c) All other directions of the Tribunal are upheld;

d) Needless to say, amounts already deposited/released shall be given due credit.

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