IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH

WEDNESDAY, THE 17TH DAY OF JUNE 2015/27TH JYAISHTA, 1937

MACA.No. 1624 of 2013 ()

AGAINST THE AWARD IN OPMV 723/2009 of MACT PALA DATED 27-08-2012

APPELLANT/PETITIONER:

SHIJOMON
S/O.PHILIP, VAZHAYIL THEKKETHIL HOUSE, 8TH MILE BAGOM
CHAKKUPALLOM VILLAGE, ANAKKARA P.O., IDUKKI DISTRICT.

BY ADV. SRI.ABRAHAM MATHEW (VETTOOR)

RESPONDENTS/RESPONDENTS:
----

1. MUTHU @ T.P.ROY
S/O.BABY, THALIYANIYIL HOUSE, MALLIKASSERY KARA
ELIKULAM VILLAGE. PIN 686 577

2. TIBIN
KIZHAVANCHIYIL HOUSE, POONJAR P.O., KOTTAYAM.
KOTTAYAM DISTRICT 686 581

3. THE RELIANCE GENERAL INSURANCE CO.LTD.
REPRESENTED BY ITS BRANCH MANAGER, XL/3599
FOURTH FLOOR ELIZABETH ALEXANDER MEMORIAL BUILDING
SHANGUMUKAM ROAD, MARINE DRIVE, COCHIN-682031.
ERNAKULAM DISTRICT

R3 BY ADV. SRI.K.B.RAMANAND

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 17-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

T.R.RAMACHANDRAN NAIR &
K.P.JYOTHINDRANATH, JJ.
- -
M.A.C.A.No.1624 OF 2013
- -
Dated this the 17th day of June, 2015

JUDGMENT

Ramachandran Nair, J.

We are only concerned with the claim for enhancement of compensation. As regards the accident and the finding on negligence no interference is called for. It is the case of the appellant that he was a driver of a lorry and while he was driving lorry bearing Reg.No. KL-37/3245 on 1.4.2009 another lorry bearing Reg.No.KL-7/M 6318 driven by the first respondent in a rash and negligence manner hit on the appellant's vehicle. After sustaining fracture, he was admitted and treated in the Matha Hospital. Evidence was let in by the appellant and Exts.A1 to A10 have been marked in evidence and Ext.X1 is the disability certificate issued by the Medical College Hospital, Kottayam where 13% is the physical disability reported.

2. Heard the learned counsel on both sides.

3. The learned counsel for the appellant submits that being a

driver having heavy licence, the monthly income ought to have been fixed on a higher pedestal. It is also submitted that the appellant had sustained two fractures, one fracture right femur and fracture of tibia.

4. Going by the diagnosis by the hospital, the description is the following :

“ Comminuted fracture shaft of right femur
Type VI shatzken (Rt) proximal tibia - open (Type II)”

5. The period of treatment is from 1.4.2009 to 9.4.2009 and later from 29.10.2011 to 1.11.2001. The Tribunal has taken the number of days of impatient treatment as only 4, whereas the actual period is 13.

6. Arguments have been heard on the fixation of monthly income. It is clear that he was having a heavy driving licence which is proved by Ext.A10. Of course as regards the monthly income, there may not be any documentary evidence as it is not possible in such cases. Therefore in tune with the relevant rate for wages prevalent at that point of time, we will have to fix the same. What is claimed in the appeal is @ Rs.10,000/- per month. The learned counsel for the

Insurance Company submits that the claim of Rs.10,000/- is exorbitant.

7. After hearing both sides and in the light of the fact that the appellant was having heavy driving licence, we will be justified in adopting the figure at Rs.7,500/-.

8. The next aspect is regarding the permanent disability. Going by Ext.X1, it is 13%. The Tribunal for the purpose of assessing compensation has taken the figure as 8%. As rightly pointed out by the learned counsel for the Insurance Company, it will be only permanent partial disability to a limb and not whole body disability. After going through the documents concerning the details of the injuries also and in the light of the fact that he was a driver by profession and the disability is to the leg, we fix the percentage of disability at 10% which will be reasonable.

9. The appellant will be entitled to more amount towards pain and suffering since two times hospitalization was required and major fractures were caused to him. The compensation granted under other heads also require a slight modification in the light of the discussions made above and therefore we refix the compensation in the following

manner :

Head of claim	*Amount Awarded in rupees*
Loss of earnings	30000
Transportation expenses	2000
Extra nourishment	1000
Damage to clothing etc.	500
Bystander expenses	3250 (13 x 250)
Medical expenses i) Other incidental	88185
Pain and suffering	35000
Loss / reduction earning capacity and permanent disability	162000 (7500 x 12 x 18 x 10%)
Loss of amenities	10000
Total	331935 Rounded off to Rs.3,31,940/- (Rupees three lakhs thirty one thousand nine hundred thirty five only)

10. The enhanced amount will carry interest @ 9% per annum and we hold that the Insurance Company is liable to satisfy the amount awarded and there will be a direction to the Insurance Company to

deposit the amount with interest within a period of three months and we permit the appellant to withdraw the amount also.

The appeal is accordingly allowed. The parties will bear their costs in the appeal.

T.R.RAMACHANDRAN NAIR, JUDGE

K.P.JYOTHINDRANATH,JUDGE

sv.