

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 3RD DAY OF NOVEMBER 2015/12TH KARTHIKA, 1937

MFA (WCC) .No. 174 of 2008 ()

AGAINST THE JUDGMENT IN WCC 82/2003 of THE COURT OF THE
COMMISSIONER FOR WORKMEN'S COMPENSATION AND DEPUTY LABOUR
COMMISSIONER, KANNUR DATED 26-03-2008

APPELLANT(S) /APPLICANT:

SUNILKUMAR M.G. , S/O.GEORGE,
MYKKOTTUMKARA HOUSE, ARINCHERMALA POST, CHUNDAKUNNU,
PANAMARAM, MANANTHAVADY, WAYANAD DISTRICT.

BY ADV. SMT.CELINE JOSEPH

RESPONDENT(S)/OPPOSITE PARTY 1 & II:

1. T.B.KUNHI MAYIN HAJI,
S/O.T.B.MOIDEEN KUTTY, PADHOOR HOUSE, THEKKIL POST,
KASARAGOD.

2. UNITED INDIA INSURANCE CO.LTD.,
RAWTHER BUILDING, NEAR PINANGODE ROAD JUNCTION,
MAIN ROAD, KALPETTA, WAYANAD DISTRICT.

R2 BY ADV. SRI.JOHN JOSEPH VETTIKAD

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON
30-09-2015, THE COURT ON 03-11-2015 DELIVERED THE FOLLOWING:

OKB

P.R. RAMACHANDRA MENON & K. HARILAL, JJ.

M.F.A. (WCC) No.174 of 2008

Dated this the 3rd day of November, 2015.

JUDGMENT

Harilal, J.

The appellant herein was the applicant in WCC No.82/2003 on the files of the Commissioner for Workmen's Compensation and Deputy Labour Commissioner, Kannur. He was a workman employed as driver in the tipper lorry bearing Registration No.KL-14/A-3996 owned by the 1st respondent and insured with the 2nd respondent. According to the appellant, he met with an accident on 26.4.2003 while he was in employment under the 1st respondent. On that day, while he was driving the said tipper lorry from Sreekandapuram to Thottada, when the vehicle reached near Thazhe Chovva, a cow ran across the road, he lost control of the vehicle and consequently the vehicle overturned and the appellant sustained severe injuries to his legs and other parts of his body.

Though, immediately after the accident, he was taken to the AKG Hospital, Kannur, and thereafter, referred to the Medical College Hospital, Pariyaram, and later to Yenepoya Hospital at Mangalore, where he underwent two surgeries and his right leg was amputated. According to the appellant, at the time of the accident, he was getting a monthly salary of Rs.4,000/- and he was aged 26 years only. According to the appellant, the respondents are jointly and severally liable to compensate him for the injuries suffered by him personally during the course of employment under the 1st respondent. He claimed an amount of Rs.5 lakhs from the respondents.

2. In the counter statement filed by the 1st respondent, he has admitted the accident; but, denied the averment in the petition that the accident was caused during the course of employment. The respondents disputed the age and income of the appellant. According to them, the appellant's wages was Rs.2,000/- only. In evidence, the appellant himself was examined as A.W.1 and Exts.A1 to A4 were marked.

No evidence was adduced from the side of the opposite party. After considering the evidence on record, the Commissioner has passed an award granting Rs.2,16,026/- taking Rs.2,000/- only as monthly income. The inadequacy and correctness of the quantum of compensation fixed by the Commissioner are under challenge in this appeal. The 2nd respondent admitted the policy coverage.

3. Heard the learned counsel for the appellant and the learned counsel appearing for the respondents.

4. The learned counsel for the appellant mainly contended that the Commissioner absolutely went wrong in assessing the monthly income of the appellant as Rs.2000/- only and he should have found that the appellant was getting Rs.4,000/- as monthly income at the time of accident. The Commissioner ought to have found that the 1st respondent did not adduce any evidence to prove the salary as Rs.2000/- only. Secondly, it was contended that the Commissioner should have taken the disability as 100%, in view of the decision of the Supreme Court in K.

Janardhanan v. United India Insurance Company [2008 ACJ 2039].

5. Per contra, the learned counsel for the respondents advanced arguments to justify the determination of the quantum of compensation by the Commissioner. According to the 2nd respondent, the Tribunal is justified in fixing the monthly income as Rs.2000/- only in the absence of any kind of evidence from the part of the appellant.

6. In view of the submissions made at the Bar, the first point to be considered in this appeal is, whether the Commissioner is justified in finding that the injuries caused to the appellant by the accident were arising out of and in the course of employment.

7. The 1st respondent has admitted that the injuries were caused to the appellant by the accident. But, according to him, it was not during the course of employment. Though the 1st respondent denied the liability, no contra evidence had been adduced. But, on the other hand, the applicant has given oral evidence and produced Ext.A2 copy of the FIR and Ext.A3

accident Register-cum-wound certificate. According to Ext.A2, the accident had occurred when the 1st respondent had been driving the vehicle bearing No.KL-14/A-3996. Further, the cause of accident is supported by Ext.A3 accident Register-cum-wound certificate, wherein the history of the cause of injuries is recorded. These documentary evidence have not been disputed by the respondents. So, the Commissioner is justified in finding that the injuries were caused to the appellant by the accident arising out of and in the course of employment of the 1st respondent.

8. The next point to be considered is, whether the Commissioner is justified in fixing the quantum of compensation. Indisputably, the appellant is a 'workman' coming under Section 2(n) of the Workmen's Compensation Act. As per Ext.A4, his date of birth is '20.3.1975'. As per Ext.A1 disability certificate, he has got 85% permanent disability. According to the appellant, he was drawing Rs.4,000/- per month at the relevant time of accident. The 1st respondent

contended that the monthly wages of the appellant was Rs.2,000/- only. It is to be remembered that, in so far as a workman is concerned, it may not be possible to prove his wages by documentary evidence as he is a recipient only; whereas the employer is in a better position than the workman in this regard. Here, no documentary evidence had been produced by either of them to prove the exact monthly wages of the appellant. In such a circumstance, the fact that the minimum monthly wages applicable to the driver of a light motor vehicle was Rs.4,000/- at the relevant time assumes much significance. If the driver of a light motor vehicle was getting Rs.4,000/- per month, certainly, the wages of the driver of a heavy vehicle could have been more than Rs.4,000/- at the time of accident. Considering the above fact and money value prevalent at that time, we are inclined to fix monthly wages @ Rs.4,000/-.

9. In view of the description of the injuries and the resultant nature of amputation, which is evident from Ext.A1 disability certificate, the disability

caused to the appellant would fall under Serial No.17 of Schedule-I and the corresponding percentage of earning capacity is '80'. Considering the age of the appellant, the factum specified in the 2nd column of Schedule-IV against 28 years is '211.79'. Though the learned counsel for the appellant cited the decision in Janardhanan v. United India Insurance Company and another [2008 (8) SCC 518] to canvass the point that percentage of loss of earning capacity is '100', we are not inclined to apply the said decision in the instant case; wherein, the injury is a scheduled one. We have meticulously gone through the decision and found that there the injury was not a scheduled one unlike the injury in the instant case. In the instant case, as referred above, injury would fall under Serial No.70 of I schedule. So, we are inclined to fix the percentage of loss of earning according to the schedule only.

10. Thus, on a computation applying the relevant factor and the relevant percentage of loss of earning, the petitioner is entitled to get a total compensation of Rs.4,06,636.80/- (4000 x 60 x 80 x 211.79/100 x 100).

The balance amount payable is Rs.1,90,610.80/-. The appellant is entitled to get interest at the rate of 12% per annum for the enhanced compensation from the date of accident. The 2nd respondent is directed to deposit the enhanced compensation within a period of one month from the date of receipt of a copy of this judgment.

The appeal is disposed of as above.

Sd/-

P.R. RAMACHANDRA MENON, JUDGE

Sd/-

K. HARILAL, JUDGE

okb.