

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

&

THE HONOURABLE MR. JUSTICE N.K.BALAKRISHNAN

FRIDAY, THE 29TH JULY 2011 / 7TH SRAVANA 1933

MACA.No. 1164 of 2011()

OP(MV)NO .104/2005 of MOTOR ACCIDENT CLAIMS TRIBUNAL, ALAPPUZHA

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APPELLANT(S)/3RD RESPONDENT

**THE ORIENTAL INSURANCE CO.LTD.
METRO PALACE, GROUND FLOOR, OPP.NORTH RAILWAY
STATION, ERNAKULAM, REP.BY ITS DULY AUTHORIZED
OFFICER,**

BY ADV. SRI.VPK.PANICKER

RESPONDENT(S)/ RESPONDENTS 1 & 2 & PETITIONER

- 1. P.J.RAJU, PANAKKAL PURACKAL,
SEA VIEW WARD, ALAPPUZHA-688 001**
- 2. JACOB D SUZA, STAR COTTAGE,
KOMMADY WARD, ALAPPUZHA-688 001**
- 3. PONNAN, S/O.JOSEPH,
CHANNAPRAMBIL, THUMPOLIY P.O.,ALAPPUZHA.PIN-688 008**

BY

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION
ON 29/07/2011,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

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R. BASANT & N.K.BALAKRISHNAN, JJ.

M.A.C.A.No.1164 of 2011

Dated this the 29th day of July, 2011

Judgment

Basant, J.

Insurance company is the appellant. The company claims to be aggrieved by the quantum of compensation awarded to the claimant. The claimant staked a claim for compensation for personal injuries suffered by him in an accident which took place on 20.7.2004. The claimant had suffered injuries. He had suffered disability also. The disability was assessed to be 25%. The claimant was a manual worker/mazdoor employed by the BSNL. His monthly income was Rs.5,029/-. The Tribunal awarded a total amount of Rs.1,28,720/- as per the particulars given in the tabular column appearing in paragraph 14 of the award.

2. Before us the dispute is only regarding the compensation for disability, i.e. Rs.95,000/-, awarded to the claimant. The Tribunal took note of the income of the claimant which was duly certified to be Rs.5029/-. Going by the age of the claimant at the time of accident, 12 was reckoned as the multiplier. The Tribunal followed the multiplier-multiplicand method and held that the

claimant is entitled to a total amount of Rs.1,81,044/- (Rs.5029 x 12 x 12 x 25/100) as compensation.

3. However, the Tribunal did not award this amount of Rs.1,81,044/- as compensation. The Tribunal took note of the admitted stand of the claimant that his retirement age is 65 years. He was continuing to work as a Mazdoor in the BSNL. Therefore, the Tribunal noted that there was no immediate reduction in the monthly earnings. Having come to that conclusion that the Tribunal appears to have awarded a global amount of Rs.95,000/- being approximately 50% of the amount of Rs.1,81,044/- calculated by the Tribunal. The Tribunal described that payment as compensation for disability. The contention of the learned counsel for the appellant is that the award of Rs.95,000/- as a global amount for disability is not justified.

4. We have considered all the relevant inputs. The claimant aged 55 was to continue in his employment till he reached the age of 65 years and till then there will be no tangible reduction in his earnings. However, one cannot lose sight of the fact that with only 75% of physical competence, he will have to strain harder to

produce work which he was earlier turning out. The extra effort which is required to be put in by the disabled claimant would certainly have an impact on the work which he has to do till the age of retirement. Even if we ignore that dimension of loss/obligation to work extra on the claimant, we cannot lose sight of the fact that after his retirement, his earning capacity would be reduced and that in turn would have reflected on his ability to earn. For persons aged above 65 years, 5 is the multiplier. So reckoned, the claimant will certainly be entitled for compensation for the reduction in earnings for the post retrieval phase of his life. Even if we take only Rs.3000/- as the possible earning after his retirement, the claimant would certainly be entitled to an amount of Rs.45,000/- ($3000 \times 12 \times 25/100 \times 5$).

5. The claimant will have to endure the disability for the rest of his life. The physical disability has been computed at 25%. So far the entire rest of his life, he will have to live with that disability. This would certainly impair the quality of life which the claimant can aspire to live for rest of his life. The physical disability suffered by a person has 2 fold reflections of his life. It may reduce the earning capacity. It will also reduce/impair the

quality of life which he can aspire to live. For such impairment in the quality of life, under the head of loss of amenities, he will certainly be entitled for compensation. With no separate amount awarded for the shortened expectancy of life, the compensation for loss of amenities fixed by the Tribunal must realistically take into account that dimension of the loss also.

6. In any view of the matter, we are satisfied that the amount of Rs.95,000/- awarded as compensation for disability does not warrant interference. That global amount is seen fixed by the Tribunal roughly as 50% of the compensation which would otherwise have been payable to a person not having any regular employment. We are of the opinion that appellate jurisdiction under Section 173 of the M.V.Act need not be invoked to interfere with the said award by the Tribunal.

6. This appeal is dismissed in limine in these circumstances.

R. BASANT, JUDGE.

N.K.BALAKRISHNAN, JUDGE.

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