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VELAYUDHAN

v.

NATIONAL INSURANCE CO. LTD. & ANR.

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(Civil Appeal No. 6164 of 2022)

SEPTEMBER 07, 2022

**[M. R. SHAH AND KRISHNA MURARI, JJ.]**

- C *Compensation – Vehicular Accident – Appellant-Claimant sustained very serious injuries resulting into 68% permanent disability – Held: Tribunal and High Court awarded Rs.50,000/- only towards pain and suffering – Further, High Court erred in awarding the future economic loss treating the income of the claimant at Rs. 3,000/- per month only – Claimant was working as a Mason*
- D *– Permanent disability assessed by the High Court is at 100% – Even considering the minimum wages payable to the Mason and the future rise in income, the claimant is entitled to the economic loss past as well as future considering the income at Rs. 5,000/- per month – Claimant was 40 years of age, multiplier of 15 applied –*
- E *Impugned order passed by the High Court modified – Rs. 24,000/- awarded towards loss of earning, Rs. 9,00,000/- towards future economic loss (instead of Rs. 5,40,000/- as awarded by the High Court) and Rs. 4,00,000/- towards pain, shock, and suffering – Claimant entitled to Rs. 15,42,800/- with 7.5% interest p.a. from the date of the claim petition, till satisfaction – Respondent-Insurance Company to pay the enhanced amount of compensation.*

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 6164 of 2022.

- G From the Judgment and Order dated 23.10.2018 of the High Court of Kerala at Ernakulam in MACA.No. 2601 of 2008.

A. Karthik, Sajith P., Ms. Anupriya, Alok Kr. Dwivedi, Ms. Sarika Verma, Advs. for the Appellant.

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The Judgment of the Court was delivered by

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**M. R. SHAH, J.**

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 23.10.2018 passed by the High Court of Kerala at Ernakulam in MACA No. 2601/2008, by which, the High Court has partly allowed the said appeal and enhanced the total amount of compensation to Rs. 8,24,800/-, the original claimant has preferred the present appeal.

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2. In a vehicular accident, the appellant herein – original claimant sustained very serious injuries resulting into 68% permanent disability (the High Court assessed the same as 100%). The appellant sustained head injury with right temporal contusion with SDH and brain stem injury, fracture multiple metatarsal bones, fracture medial malleolus left foot, pneumothorax left with fracture ribs left side, lacerated wound occipital scalp, contusion left upper arm mid outer side with limited movement of upper limb, burns injury left leg antero medially mid part lacerated wound leg mid anteriorly with adjacent abrasion, lacerated wound between little toe and fourth toe, edema left foot dorsal side multiple bodily injuries. The claimant filed claim petition before the learned Tribunal towards compensation. The learned Tribunal awarded the compensation under different heads as under: -

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Head	Amount claimed	Amount awarded
Loss of earning	Rs. 45,000/-	Rs. 16,000/-
Expense for transportation	Rs. 20,000/-	Rs. 5,000/-
Extra nourishment	Rs. 10,000/-	Rs. 4,000/-
Damages to clothing	Rs. 0/-	Rs. 5.00/-
Damages to motorcycle	Rs. 4,000/-	Rs. 3,850/-
Expense for treatment	Rs. 50,000/-	Rs. 80,450/-
Expense for personal assistance	Rs. 1,00,000/-	Rs. 1,00,000/-
Compensation for pain and suffering	Rs. 1,50,000/-	Rs. 50,000/-
Compensation for permanent disability	Rs. 2,00,000/-	Rs. 2,44,800/-
Compensation for loss of amenities	Rs. 0/-	Rs. 25,000/-

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The learned Tribunal assessed the income of the claimant at Rs. 2,000/- per month and accordingly, awarded actual economic loss as well as future economic loss. The learned Tribunal awarded Rs. 50,000/- towards pain and suffering. In the appeal, the High Court

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- A though assessed the permanent disability at 100% for working out of the compensation, enhanced the amount of compensation with respect to the future economic loss considering the income of the injured – claimant at Rs. 3,000/- per month. The High Court did not enhance the amount of compensation under other heads.
- B 2.1 Feeling aggrieved and dissatisfied with the impugned judgment and order of the High Court, the original claimant – injured has preferred the present appeal.
3. We have heard learned counsel appearing on behalf of the appellant. At the outset, it is required to be noted that in the vehicular accident the appellant sustained very serious injuries referred to hereinabove and suffered trauma and suffering. The learned Tribunal and the High Court assessed and awarded Rs. 50,000/- only towards pain and suffering. Considering the serious injuries suffered by the appellant – claimant and prolonged hospitalisation and the pain and suffering and trauma suffered by the appellant due to the accident, we are of the opinion that the amount of Rs. 50,000/- awarded towards pain and suffering can be said to on a lower side. We are of the opinion that in the facts and circumstances of the case and looking to the serious injuries, prolonged hospitalisation and the pain, shock and suffering and trauma, which might have been suffered by the appellant – claimant, it would be just and proper to award Rs. 4,00,000/- under the head of pain, shock, and suffering.
4. Similarly, the High Court has erred in awarding the future economic loss treating the income of the claimant at Rs. 3,000/- per month only. The claimant was working as a Mason. The permanent disability assessed by the High Court is at 100%. Therefore, even considering the minimum wages payable to the Mason and the future rise in income, the claimant shall be entitled to the economic loss past as well as future considering the income of the claimant at Rs. 5,000/- per month. Looking to the age of the claimant that was 40 years, multiplier of 15 is required to be applied.
- G 5. In view of the above, the present appeal is allowed. The impugned judgment and order passed by the High Court is modified awarding Rs. 24,000/- towards loss of earning; Rs. 9,00,000/- towards future economic loss (instead of Rs. 5,40,000/- as awarded by the High Court) and Rs. 4,00,000/- towards pain, shock, and suffering. Thus, the
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claimant shall be entitled to a total sum of Rs. 15,42,800/- with 7.5% interest per annum from the date of the claim petition, till satisfaction. The respondent – Insurance Company is directed to pay/deposit the enhanced amount of compensation as per the present judgment and order within a period of eight weeks from the date of receipt of a copy of this judgment. The present appeal is partly allowed to the aforesaid extent. No costs.

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Divya Pandey

Appeal partly allowed.

(Assisted by : Roopanshi Virang, LCRA)