

(1991) 07 KL CK 0013

High Court Of Kerala

Case No: M.F.A. No. 661 of 1985

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APPELLANT

Vs

Chinnappa Gounder
and OthersRESPONDENT

Date of Decision: July 15, 1991**Citation:** (1992) ACJ 669**Hon'ble Judges:** Varghese Kalliat, J; G.H. Guttal, J**Bench:** Division Bench**Advocate:** V. Chitambaresh and N.S. Sundararaman, for the Appellant; S. Parameswaran and S. Venkitasubramonia Ayyar, for the Respondent**Final Decision:** Allowed

Judgement

Varghese Kalliat, J.

Claimant in a motor accident claim petition is the appellant. Claimant was injured in the accident. It happened on 22.3.1984. Appellant was returning to her house after taking water in a pot from the public pipe which is on the southern side of the road. A motor cycle which was driven by the 2nd respondent hit the appellant. The impact of the hit caused serious injuries on the body of the appellant. Her right thigh bone was broken. She was taken to the Government Hospital, Palghat. She was in the hospital for 39 days. Plaster was put on her leg. After two months, plaster was removed and finding that the bones were not united, again her leg was plastered. On that occasion, she was an inpatient for 8 days. Subsequently, plaster was removed. But she was not able to walk properly and she was not able to bend her knee without pain.

2. The Tribunal found that the injury was caused on account of the negligent driving of the motor cycle by the 2nd respondent. The appellant claims compensation under different heads. The total amount claimed was only Rs. 69,665/-. Only a very meagre amount of Rs. 2,150/- was awarded by the Tribunal. Appellant submits that the amount awarded is abnormally subnormal and highly inadequate.

3. Counsel argued the case with ability. He highlighted only the relevant points taken by the appellant. He submitted that the Tribunal went wrong grossly when it awarded only an amount of Rs. 1,000/- for pain and suffering. Counsel pointed out that the appellant was aged 38 and had sustained serious fracture of femur. Appellant was in the hospital for 39 days at the first instance as an inpatient. She was discharged from the hospital with plaster. She was with the plaster for two months. When the plaster was cut and removed, doctors found that the bones were not united properly and so she was again subjected to treatment for 8 days in the hospital. Her leg was put under plaster. So altogether, she was an inpatient in the hospital for 47 days. It is in evidence that even after that, she had to undergo treatment. Perhaps it requires continuous treatment for considerable period. It is in evidence that she cannot bend her knee without pain. She is now limping. There is shortening of leg by 2 cm. All these are high powered facts which will go to show that she has suffered intense pain, discomfort and inconvenience which had to be compensated by awarding adequate amount. Rs. 1,000/- awarded by the Tribunal on the head "pain and suffering" is quite inadequate in our view. We fix Rs. 10,000/- as adequate and reasonable compensation for the pain and suffering undergone by the appellant.

4. Counsel submitted that for permanent disability and for loss of future earning power, the appellant claimed Rs. 15,000/- and Rs. 39,600/- respectively. In regard to permanent disability, which will have serious impact on future earning capacity of the appellant, it is pointed out that even after the long continuous treatment, she is not in a position to do her strenuous manual work as she was doing earlier. The certificate of the doctor, Exh. A-2, would show that she had 100 per cent temporary disability for three months, 50 per cent temporary disability for another three months and 25 per cent temporary disability for two years. Further, it is seen that there is shortening of her right lower limb by 2 cm., callus formation, thickening of bones and stiffness of knee. It is said that the shortening will continue. All these would indicate that she has suffered serious disability and that disability will certainly affect her earning capacity, particularly in view of the fact that she is an agricultural worker and in off season, she is doing other jobs, in building construction work. The learned Tribunal has awarded only Rs. 500/- under the head "permanent disability" and nothing was granted for loss of future earning capacity. The evidence in the case is that her daily wage was Rs. 15/-. It is not difficult for us to note the fact that there is great hike in the wage structure of agricultural labourers. Taking all these facts into consideration, we feel that we will be justified in fixing a total compensation of Rs. 50,000/- under these two counts.

5. Thus we find that the appellant is entitled to compensation in the sum of Rs. 60,650/-. This amount will carry interest at 12 per cent per annum from the date of application till date of payment. Appeal is disposed of.

6. At the instance of counsel for the respondents, this case was posted for "to be spoken to" on 15.7.1991. Though counsel made an elaborate argument on the question of quantum of compensation fixed by us on the two counts, permanent disability and future earning capacity, he failed to convince us to change the view we have already taken.