

**Ratheesh Vs. Sukas**

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**Court :** Kerala

**Decided On :** Dec-20-2013

**Judge :** Honourable Mr.Justice S.Siri Jagan

**Appellant :** Ratheesh

**Respondent :** Sukas

**Judgement :**

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE S.SIRI JAGAN & THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN FRIDAY,THE20H DAY OF DECEMBER201329TH AGRAHAYANA, 1935 MACA.No. 1715 of 2011 ----- O.P(MV) NO:

1457. 2003 OF THE PRICIPAL MOTOR ACCIDENT CLAIMS TRIBUNAL , KOZHIKODE DISTRICT. ----- APPELLANTS/PETITIONERS IN OP(MV):  
----- RATHEESH, S/O.DASAN, NALAM KANDAM KUNY HOUSE, NADERI AMSOM DESOM, P.O.NADAYIL VIA KOYILANDY, KOZHIKODE. BY ADV. SRI.A.V.M.SALAHUDEEN  
RESPONDENTS/RESPONDENTS IN OP(MV):  
----- 1. SUKAS.K, S/O.KRISHNAN KUTTY PILLAI, 18/1124, DARSHAN, P.O.PUTHIYARA, KOZHIKODE673001.

2. THE NATIONAL INSURANCE CO.LTD, NOOR COMPLEX, MAVOOR ROAD, KOZHIKODE673001. R2(B/0) BY ADV. SRI. M.A. GEORGE THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON2012-2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: S.SIRI JAGAN & K.RAMAKRISHNAN, JJ.

===== M.A.C.A.No. 1715 of 2011 ===== Dated this the 20th day of December, 2013

## **JUDGMENT**

K.Ramakrishnan, J.: The claimant in O.P.(M.V).No.1457/2003 on the file of the Motor Accidents Claims Tribunal, Kozhikode, is the appellant herein. The appellant filed the application for compensation for the injuries and consequential disability suffered by him in a motor vehicle accident caused on account of the rash and negligent driving of the vehicle by its driver, owned by the 1st respondent and insured with the 2nd respondent. After considering the evidence on record, the Tribunal found that the accident occurred due to the negligent driving of the vehicle by its driver and awarded a total compensation of ` 2,21,733/- on various heads as follows: Amount Head of claim awarded ` 1 Transport to hospital 750.00 2 Extra nourishment 1,000.00 3 Loss of earning 5,000.00 4 Bystander's expenses 2,400.00 5 Treatment expenses 8,583.00 6 Pain and suffering 15,000.00 7 Permanent disability 189,000.00 Total 2,21,733.00 m.a.c.a.1715/11 - :

2. :- Dissatisfied with the quantum of compensation awarded, the appellant has come before this Court with the above appeal claiming enhancement of compensation.

2. Heard the learned counsel for the appellant and the learned standing counsel for the insurance company.

3. The learned counsel for the appellant submitted that the appellant was aged 18 years and he was a painter by profession and getting ` 6,000/- per month. But the Tribunal has arbitrarily fixed his monthly income as ` 2,500/-, which is palpably low. Further, he had suffered 35% permanent disability and that was accepted by

the Tribunal as such. But no amount was awarded under the head, 'loss of amenities in life'. Considering the nature of injuries sustained and the treatment undergone, the amount awarded under the heads, 'pain and suffering', loss of earning' etc. are also on the lower side. So learned counsel for the appellant submitted that the appellant is entitled to get enhancement on all heads.

4. On the other hand, the learned counsel for the insurance company submitted that in the absence of any m.a.c.a.1715/11 - :

3. :- convincing evidence adduced on the side of the appellant to prove his income or avocation, the Tribunal was perfectly justified in notionally fixing the income as ` 2,500/-, which cannot be said to be on the lower side in the year 2003. The total compensation awarded is just and proper. So, according to the learned counsel for the insurance company, no interference is called for at the hands of this Court regarding the quantum of compensation awarded.

5. We have considered the rival contentions of both parties in detail.

6. The appellant was aged only 18 years at the time of accident. Although he claimed to be a painter and getting ` 6,000/- per month, he had not adduced any evidence to prove this fact. Under the circumstances, the Tribunal had no other option but to fix the income notionally. Considering the fact that the accident occurred in the year 2003 and the living conditions, we feel that the amount of ` 2,500/- fixed by the Tribunal is on the lower side and we are re-fixing the same to ` 3,000/- per month. m.a.c.a.1715/11 - :

4. :- 7. It is seen from the documents produced that he suffered the following injuries: "... Multiple abrasion left forearm, avulsion skin (R) heel, peritoneal cavity contained blood clots, shattered (L) Kidney pedicle avulsion, distal pancreas cut off from the body... " He had undergone nephrectomy, distal pancreatectomy and splenectomy and even after discharge from the hospital, he continued treatment as out patient for some time. So considering these facts, the period of treatment taken by the Tribunal as two months appears to be on the lower side and we take this period as four months and award ` 12,000/- instead of ` 5,000/- under the head, 'loss of earning during the period of treatment'.

8. Ext.C1 disability report shows that he is having 35% permanent disability. This was accepted by the Tribunal as such. Though the Tribunal awarded the amount under the head, 'disability', the manner in which, the calculation was done, shows that the Tribunal intended to award that amount under the head, 'loss of earning capacity'. Taking his monthly income as ` 3,000/- as fixed by this Court, if a re-calculation is made, he will be entitled to get ` 2,26,800/- (3000 x 12 x 18 x 35%)  
m.a.c.a.1715/11 - :

5. :- instead of ` 1,89,000/- awarded by the Tribunal under the head, 'loss of earning capacity' and we award this amount under this head. Considering the age and also the nature of disability suffered by him, this may have great impact on his personal life. He was aged only 18 years at the time of the accident. This may affect his personal life as well as convenience in life as well. But no amount is seen awarded by the Tribunal under this head. So considering these aspects, we are inclined to fix the compensation payable under the head, 'loss of amenities and convenience in life' to ` 75,000/-. No amount was awarded under the head, 'future treatment'. Considering the fact that he lost one kidney and also suffered injury to pancreas, he may require future treatment and continuous medication will be required for him through out his life. Considering these aspects, we award ` 30,000/- under the head, 'future treatment'. Though persuasive arguments were made by the learned counsel for the appellant to get enhancement on other heads, we are not inclined to enhance any amount under the other heads, as we feel that the amounts awarded under the other heads are just and proper. In all, the m.a.c.a.1715/11 - :

6. :- appellant will be entitled to get an additional compensation of ` 1,64,800/- over and above what has been awarded by the Tribunal, which the 2nd respondent-insurance company is liable to pay with 9% interest per annum on ` 1,34,800/- (excluding ` 30,000/- awarded under the head, 'future treatment') from the date of claim petition till payment. Two months' time is granted to the insurance company to deposit this amount as well. If this amount exceeds the amount claimed by the appellant, then the appellant will be liable to pay the balance court fee, which will have be recovered from the amount awarded by this Court. With the above modification of the impugned award of the Tribunal, the appeal is disposed of. Sd/-

S.SIRI JAGAN, JUDGE Sd/- sdk+ K.RAMAKRISHNAN, JUDGE ///True copy///  
P.A. to Judge

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