

Arathy G.S. vs the Manager

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Court : Kerala

Decided On : Mar-28-2025

Judge : Honourable Mr. Justice Easwaran S.

Appeal No. : MACA/2362/2021

Appellant : Arathy G.S.

Respondent : The Manager

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE EASWARAN S. FRIDAY,
THE 28TH DAY OF MARCH 2025 / 7TH CHAITHRA, 1947 MACA NO.
2362 OF 2021 AGAINST THE AWARD DATED 22.05.2018 IN OPMV
NO.376 OF 2013 OF MOTOR ACCIDENT CLAIMS TRIBUNAL,
THIRUVANANTHAPURAM APPELLANT/PETITIONER:

ARATHY G.S. AGED 29 YEARS D/O. SATHEESAN NAIR, SREE
BALAKRISHNA, KRA B-222, KULANGARA LANE, NEAR MARY GIRI
SCHOOL, KUDAPPANAKUNNU P.O., THIRUVANANTHAPURAM. BY
ADVS. R.T.PRADEEP M.BINDUDAS K.C.HARISH RESPONDENT/3RD
RESPONDENT: THE MANAGER THE ORIENTAL INSURANCE
COMPANY LTD., PADMASREE, NEAR KSRTC BUS STAND,

NEYYATTINKARA P.O., THIRUVANANTHAPURAM-695 121. BY ADV S.K.AJAYAKUMAR THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 28.03.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: EASWARAN S., J
 MACA No.2362 of 2021
 Dated this the 28th day of March, 2025

JUDGMENT

The claimant has approached this Court dissatisfied with the award passed by the Motor Accidents Claims Tribunal, Thiruvanathapuram in OP(MV)No.376/2013.

2. The brief facts necessary for the disposal of the

appeal are as follows: On 24.12.2012 at about 5.15 p.m., while the appellant/claimant was riding a scooter bearing Reg.No.KL-01/AX-2639 through Kowdiar - Peroorkada road and when she reached Ambalamukku Junction, a tanker lorry bearing Reg.No.KL-21-E-8322 came in a rash and negligent manner and hit against the appellants scooter. The claimant contended that she was a student and was also doing fabric painting and earning an amount of Rs.8,000/- per month. In support of her contention, Exts.A1 to A12 documents were produced and claimant was examined as PW1. No oral or documentary evidence was adduced on the side of the Insurance Company. The Tribunal, on appreciation of evidence, found that the claimant, though was not able to prove her avocation, still was entitled to have the income fixed at Rs.8,000/-. As regards the permanent disability suffered by the appellant in the accident, the Tribunal after taking note of Ext.A8 Disability Certificate , reduced the percentage of disability to 14% and granted the following compensation:

Sl.	Head of Claim	Amount	Amount Basis/vita
1	and gravity of the the duration of the hospitalisation and 2 Transport to hospital	10,000	3,500
2	Nominal amount	3,500	
3	Extra Nourishment	5,000	3,000
4	Damages to clothings and other	5,000	500
			Reason

medical bills produced 6 Charges for Bystander 5,000/- 3,750 Considering the nature and gravity of the duration of hospitalisation

7	Compensation for future	25,000	15,000
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the duration of hospitalisation and

9	Compensation for continuing or 20,000		2,41,920
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earning power

11	Compensation for mental	1,50,000	72,600
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petitioner Total 7,68,000/- 5,55,970 Rs.5,55,970/- with interest 8% per (Claim is limited to 7,00,000/- only) annum from 11.04.2013 till the date of realisation

3. Aggrieved by the insufficiency in the grant of compensation, the appellant has approached this Court.

4. Heard, Sri.R.T.Pradeep - learned counsel appearing for the appellant and Sri.S.K.Ajaykumar - learned counsel appearing for the Insurance Company.

5. On a consideration of the rival submissions raised across the Bar, this Court finds that the appellant is entitled to succeed.

6. In Ramachandrappa v. Manager, Royal

Sundaram Alliance Insurance Company Ltd. [(2011) 13 SCC 236], the Hon'ble Supreme Court has laid down the principles governing the fixation of notional income. Even going by the said decision, the appellant is entitled to have her income fixed at Rs.8,500/-. However, considering the fact that she being a student and the avocation stood unequivocally proved in the absence of contra-evidence of the Insurance Company, this Court finds that the income of a student cannot be fixed in par with that of a Coolie Worker.

7. It is true that in the application before the Tribunal,

the appellant has claimed only Rs.8,000/- as income. However, in Oriental Insurance Company v. Martin Xavier [2024 KHC 7049], this Court held that the averments in the claim petition need not deter the Tribunal from fixing a higher notional income, if warranted in the facts and circumstances. Therefore, this Court is of the opinion that an amount of Rs.10,000/- can be fixed as the notional income.

8. As regards the percentage of permanent disability,

this Court finds that the Tribunal has reduced the percentage of disability without assigning any reason. In Manikantan G. v. K.Janardhanan Nair and Others [2021 (5) KHC 305], a learned Single Bench of this Court held that the Tribunal cannot reduce the percentage of disability without referring the claimant to the Medical Board. Therefore, this Court is of the view that the appellant is entitled to have the percentage of disability restored at 20%. As an upshot of these discussions, the appellant is entitled to succeed. The appeal is thus allowed and the appellant is entitled for enhanced compensation as follows:

Heads Amount awarded Total Enhanced amount by the Tribunal compensation of compensation awarded in appeal Notional income of appellant is fixed at Rs.10,000/-. Percentage of permanent disability of the appellant is restored to 20%.

Compensation for	20,000/-	30,000/-	1
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disability, if any

Compensation for	72,600/-	1,44,000/-	7
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loss of amenities in life etc Total enhanced amount of compensation 2,71,480/- Accordingly, the appellants/claimants are awarded an additional compensation of Rs.2,71,480/- (Rupees Two lakhs seventy one thousand four hundred eighty only) over and above the compensation awarded by the Tribunal with interest @8% per annum from the date of petition till realization together with proportionate costs. The Insurance Company is directed to deposit the aforesaid amount within a period of two months from the date of receipt of a copy of this judgment. While,

calculating interest, it is ordered that the appellants will not be entitled for interest for a period of 583 days, which represents the period of delay in filing the appeal. The appeal is ordered accordingly. Sd/- EASWARAN S. JUDGE ACR

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