

Ajithkumar vs Radhakrishnan Nair

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Court : Kerala

Decided On : Mar-13-2025

Judge : Honourable Mr. Justice C.Pratheep Kumar

Appeal No. : MACA/778/2015

Appellant : Ajithkumar

Respondent : Radhakrishnan Nair

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE C.PRATHEEP KUMAR
THURSDAY, THE 13TH DAY OF MARCH 2025/22ND PHALGUNA, 1946 MACA
NO. 778 OF 2015 AGAINST THE ORDER/JUDGMENT DATED 20.02.2014 IN
OPMV NO.830 OF 2008 OF MOTOR ACCIDENT CLAIMS TRIBUNAL,
PERUMBAVOOR. APPELLANT: AJITHKUMAR, AGED 34 YEARS, PARAKKAL
HOUSE, KODANADU, PERUMBAVOOR, ERNAKULAM. BY ADVS. SRI.REJI
GEORGE SMT.ANUPAMA JOHNY RESPONDENTS:

1 RADHAKRISHNAN NAIR, S/O RAMANATHAN NAIR,
PULLATHUKUNNEL HOSUE, PUNCHAVAYAL P.O., MUNDAKAYAM,
KANJIRAPILLY, KOTTAYAM - 686 001. 2 RAJESH, S/O SOMAN,

PURANCHERIL VEEDU, PUNCHAVAYAL KARA, ERUMELI, NORTH VILLAGE, KARINILAM P.O., MUNDAKAYAM - 686 513. 3 ORIENTAL INSURANCE CO. LTD, REPRESENTED BY BRANCH MANAGER, THODUPUZHA - 685 584. -2- BY ADVS. R.PADMARAJ P.J.ANTONY JOSEPH MARIADAS(K/158/2003)

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 13.03.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: -3-

JUDGMENT

Dated this the 13th day of March, 2025 The petitioner in O.P.(M.V.) No.830/2008 on the file of the Motor Accident Claims Tribunal, Perumbavoor is the appellant herein. (For the purpose of convenience, the parties are hereafter referred to as per their rank before the Tribunal).

2. The petitioner filed the above O.P. under Section

166 of the Motor Vehicles Act, 1988, claiming compensation for the injuries sustained in a motor vehicle accident that occurred on 28.01.2008. According to the petitioner, on 28.01.2008 at about 9.30 p.m., while the petitioner was riding a motorcycle, he was knocked down by a pickup van bearing Registration No.KL-34/2689 driven by the 2nd respondent in a rash and negligent manner and as a result of which he fell down and sustained serious injuries.

3. The 1st respondent is the owner and 3rd respondent

is the insurer of the offending vehicle. According to the petitioner, the accident occurred due to the negligence of the driver of the offending vehicle. The quantum of compensation claimed in the O.P. is Rs.10,15,500 limited to Rs.4,00,000/-.

4. The insurance company filed a written statement, admitting the accident as well as policy, but disputing the negligence on the part of the driver of the offending vehicle.

5. The evidence in the case consists of the oral -4- testimony of PW1 and documentary evidence Exts.A1 to A10 series and Ext.X1. No evidence was adduced by the respondents.

6. After evaluating the evidence on record, the

Tribunal found negligence on the part of the driver of the offending vehicle, awarded a total compensation of Rs.2,74,139/- and directed the insurer to pay the same.

7. Aggrieved by the quantum of compensation awarded by the Tribunal, the petitioner preferred this appeal.

8. Now the point that arises for consideration is the following: Whether the quantum of compensation awarded by the Tribunal is just and reasonable?

9. Heard Sri.Reji George, the learned Counsel appearing for the petitioner/appellant, and Sri.Padmaraj, the learned Standing Counsel for the 3rd respondent.

10. The Point: In this case the accident as well as valid

insurance policy of the offending vehicle are admitted. One of the contentions raised by the learned counsel for the petitioner is regarding the income of the petitioner as fixed by the Tribunal. According to him, the petitioner was a businessman, earning Rs.5,000/- per month, but the Tribunal fixed his monthly income at Rs.3,500/-. The learned counsel for the insurer would argue that the income fixed by the tribunal is reasonable.

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11. As per the dictum laid down by the Honble

Supreme Court in the decision in Ramachandrappa v. Manager, Royal Sundaram Alliance Insurance Co. Ltd. [2011 (13) SCC 236], the notional income of a coolie, in the year 2008 will come to Rs.6,500/-.Therefore, the learned counsel prayed for fixing the notional income of the petitioner at Rs.6,500/-. The learned counsel for

the insurer would argue that the income fixed by the tribunal is reasonable. Since the notional income of a coolie, in the year 2008 will

come to Rs.6,500/-, in order to award just and reasonable compensation, in the light of a dictum laid down in the decision of the Honble Supreme Court in Ramachandrappa (supra), the notional income of the petitioner is liable to be fixed as that of a coolie, at Rs.6,500/-.

12. In the accident the petitioner sustained the following injuries: 1) Right heel pad avulsion 2) Segmental fracture fibula m/3rd & L3rd 3) Incomplete crush amputation 2nd toe at the tip 4) Undisplaced fracture ulna

13. As per Exhibit.X1 disability certificate the petitioner

suffered 18% permanent physical disability. It was issued by the medical board. The Tribunal, has accepted the permanent physical disability of the petitioner as such and hence, I do not find any -6- grounds to disbelieve the same. Therefore, the permanent physical disability of the petitioner is accepted as 18%, as fixed by the Tribunal.

14. On the date of accident, the petitioner was aged 28

years. Therefore, 40% of the monthly income is to be added towards future prospects, as held in the decision in National Insurance Co. Ltd v. Pranay Sethi [(2017) 16 SCC 680] and the multiplier to be applied is 17, as held in Sarla Verma v. Delhi Transport Corporation, [(2009) 6 SCC 121]. In the above circumstances, the loss of disability will come to Rs.3,34,152/-.

15. Towards loss of earning, the tribunal has awarded

only Rs.14,000/- being the income for 4 months @Rs.3,500/-. Considering the nature of the injuries sustained and the percentage of disability suffered by the petitioner, the petitioner might have lost income at least for a period of 6 months. Therefore, towards 'loss of income' the petitioner is entitled to get a sum of Rs.39,000/- (6,500 x 6 months).

16. Towards the head pain and sufferings, the

Tribunal has awarded Rs.30,000/-. Towards 'loss of amenities of life' Rs.21,000/- was awarded and towards 'extra nourishment' Rs. 3,000/- was awarded. According to the learned counsel for the petitioner, the compensation awarded on those heads are on the lower side.

17. The petitioner sustained serious injuries in the -7-

accident and was treated as inpatient for 62 days in 3 sessions. Because of the injuries sustained, the percentage of disability suffered and the length of treatment undergone by the petitioner, I hold that the compensation awarded by the Tribunal on the heads pain and sufferings, 'loss of amenities of life' and 'extra nourishment' are on the lower side and hence they are enhanced to Rs.50,000/-, 30,000/- and 5,000/- respectively.

18. Considering the nature of injuries sustained by the petitioner and number of days treatment undergone by the petitioner, I award an amount of Rs.12,400/- (200 x 62) under the head of bystander expenses.

19. No change is required, in the amounts awarded on other heads, as the compensation awarded on those heads appears to be just and reasonable.

20. In this case, the police filed Ext.A5 charge sheet in Crime No.192/2008 of Perumbavoor Police Station against the 2 nd

respondent. The tribunal has relied upon the scene mahazar and found 60% negligence on the part of the petitioner. The law is well settled that the charge sheet filed by the police in the crime registered in connection with the accident is prima facie evidence of negligence against the accused in the charge sheet. In the instant case, there is no contra evidence to disbelieve the Ext.A5 charge sheet. In the above

circumstances, the tribunal was not justified in finding 60% -8- contributory negligence on the part of the petitioner and, as such, the above finding of the tribunal is directed to be set aside and the 3rd respondent insurer is to be directed to pay the entire compensation awarded.

21. Therefore, the petitioners/appellants are entitled to get a total compensation of Rs.5,48,171/-, as modified and recalculated above and given in the table below, for easy reference: Sl.

Head of Claim	Amount awarded	Amount No by Tribunal	(in Awarded in . Rs.)
Appeal	(in Rs.)	1	Loss of earning 14,000/- 39,000/-
2	Transport to hospital 1,500/-	1,500/-	3
Extra nourishment	3,000/-	5,000/-	4
Attendant charges	9,300/-	9,300/-	5
Medical expenses	66,319/-	66,319/-	6
Damage to clothes etc	500/-	500/-	7
Pain and sufferings	30,000/-	50,000/-	8
Loss of amenities etc.	21,000/-	30,000/-	9
Disability	1,28,520/-	3,34,152/-	10
Bystander expense	----	12,400/-	Total 2,74,139/-
			5,48,171/-
			Reduced Rs.2,74,032/-

22. In the result, this Appeal is allowed in part, and

Respondent No.3 is directed to deposit a total sum of Rs.5,48,171/- (Rupees five lakhs forty eight thousand one hundred and seventy one only), less the amount already deposited, if any, along with interest @

-9- 8% per annum, from the date of the petition till deposit/realisation, with proportionate costs, within a period of two months from today. On depositing the aforesaid amount, the Tribunal shall disburse the entire amount to the petitioner, excluding court fee payable, if any, without delay, as per rules. Sd/- C. PRATHEEP KUMAR, JUDGE ADS

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